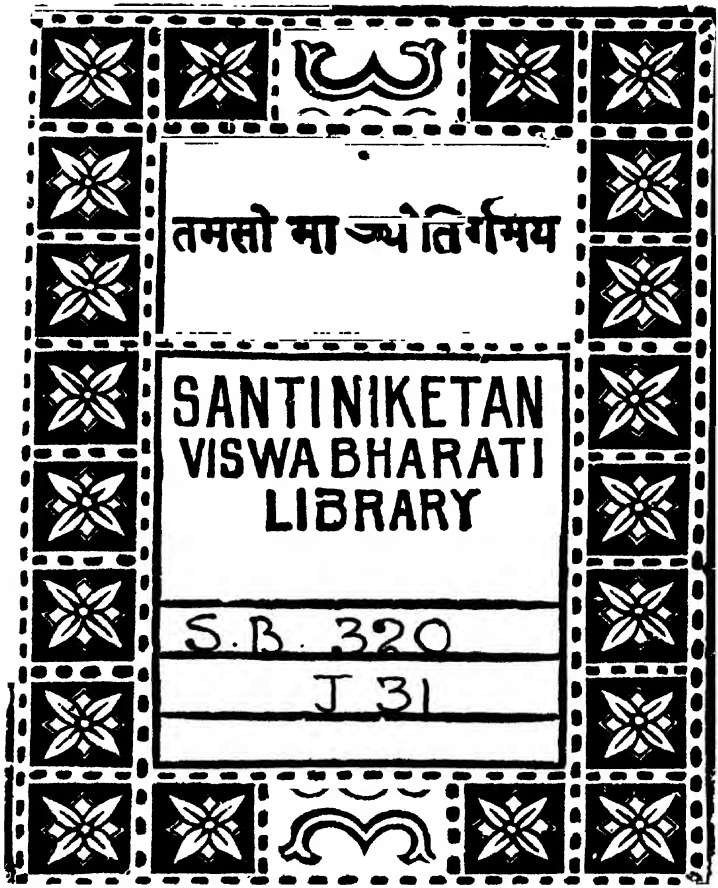
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A HAND-BOOK OF
POLITICAL PHILOSOPHY

(Based on the B.A. Syllabus of the Calcutta University.)

COMPILED FROM THE LECTURE-NOTES OF

The Late Rev. A. TOMORY, M.A.,

Late Principal of the Scottish Churches College, University Lecturer in Political Philosophy, Head Examiner in English and Member of the Syndicate.

AND FROM

OTHER VALUABLE SOURCES

BY

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THIRD EDITION

(Thoroughly revised and much improved.)

Calcutta.

SEN, RAY & CO.,

BOOK-SELLERS & PUBLISHERS.

Main :—3, MIRZAPUR STREET.

Branch :—CORNWALLIS BUILDINGS.

1915

Price 1/4 - only.

PUBLISHED BY
DEVENDRA KISOR CHOUDHURI.
Gauginarpar, Mymensingh.

First Edition, 1912, January.
Second Edition, 1913, September
Third Edition, 1915, July.

Printed by—K. C. Dass.
At the Metcalfe Printing Works,
34, Mechua Bazar Street,
CALCUTTA.

PREFACE TO THE THIRD EDITION.

The increasing demand for this Hand-book of Political Philosophy has enabled me to bring out a Third edition of it. The book has been thoroughly revised in the light of recently published books on the subject. No material alteration has been made and no pains have been spared to make all the necessary corrections. I am indebted to my friends Messrs Chittaharan Mazumder, B. A. and Devendrachandra Bhattacharyya for the pains they took in correcting the proof-sheets.

Calcutta, July, 1915. THE AUTHOR.

PREFACE TO THE FIRST EDITION.

This Hand-book of Political Philosophy is intended to meet the requirements of the B.A., candidates of the Calcutta University. Though it is primarily based upon the lecture-notes of the Late Rev. A. Tomory, I have also added a few notes from the lectures delivered by Rev. W. S. Urquhart M.A., and have freely consulted Sidgwick, Lewell and Feilden. In many cases I have borrowed from Leacock without any reserve.

My best thanks are due to those who have permitted me to publish the book and to Babu Bijoli Bhusan Chatterjee, M.A., and to Babu Debendra Nath Sanyal M.A., both of whom greatly helped me in the publication.

Calcutta, January, 1912. J. K. C.

PREFACE TO THE SECOND EDITION.

The reception which the first edition of this Hand-book has received at the hands of the B A. Students has encouraged me to bring out a Second Edition of it. Valuable additions and a few alterations here and there have been made to make it up to date. Recent works on the subject have been freely consulted and the Chapters on Sovereignty and Individual Liberty, End of the State, State interference have almost been entirely re-written. The Constitution of England has been elaborately discussed. Lastly, University and other possible questions have been given at the end of the book. The arrangement of the Subject matters has been a little altered with a view to elucidation.

My best thanks are due to Babu Amulya Ratan Bose, M.A., Pundari Kaksha Sen, M.A., and Manindra Nath Chakarvarti, B.A., who have greatly helped me with their valuable suggestions.

Calcutta, September, 1913. J. K. C.

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A HAND-BOOK OF

POLITICAL PHILOSOPHY

CHAPTER I.

§ 1.—Definition.

POLITICAL Philosophy is one of the terms applied to the subject. The other two terms are Political Science and Politics. All the three terms are in some respects objectionable. Political Philosophy seems to indicate that this subject is a branch of Philosophy. It cannot be so considered unless the word 'Philosophy' is taken to include 'all thinking'. In that case, Political Philosophy might be taken to mean thinking about Polity or Constitution of the state. But it is perhaps, although faulty, the most comprehensive title of the three.

The second title Political Science is almost a misnomer, as the subject has nothing to do with Science in the ordinary sense of the term, unless 'science' is used in a loose and irregular manner.

'Politics' is also objectionable, because the word is used generally in a totally different sense. In England, Politics means the discussion of matters arising under the Parliamentarian form of Government there prevalent and has to do not with a Science or Philosophy, but with practical affairs of legislation and administration.

This subject, whatever name we give to it, deals with the conditions of the state in any Organised and Civilised Community (and concerns itself with the developments of the state in such a community.)

Paul Janet says, 'Political Science is that part of social science (*i.e.* Sociology) which treats of the foundations of the state, and of the principles of Government.' The definition given by Bluntschli runs thus : Political science is the science which is concerned with, which endeavours to understand and comprehend the state in its conditions, in its essential nature, its various forms and manifestations and its developments. In short, it deals with the state.

German writers are in the habit of dividing this science into *Public Law* and *Politics*. Bluntschli for instance, defines Public Law to be that part of the science which 'deals with the state as it is *i.e.*, its normal arrangements, the permanent conditions of its existence. 'Politics', on the other hand, has to do with the life and conduct of the state, pointing out the end towards which public efforts are directed and teaching the means which lead to these ends, observing the action of laws upon facts and considering how to avoid injurious consequences and how to remedy the defects of existing arrangements. Public Law asks whether what is conforms to law : Politics whether the action (of the state) conforms to the end in view.'

Still their relation is close. A state is a combination of Law and Politics. Positive law must be continually receiving contributions and additions due to political activity ; and political activity has for its aim the building up of a stable constitution such as can be formulated in Public Law. In fact, the relation between Public Law and Politics is something like that which exists between a science and the application of the science. 'The highest and purest expression of Public Law is to be found in the constitution or enacted positive laws : the clearest and most vivid manifestation of Politics is the practical conduct or guidance of the state itself *viz.* Government.' We need not trouble ourselves over this (German) distinction.

§ 2.—Scope.

We have seen from above that this Science endeavours to understand the conditions under which a state is possible. It analyses the essential nature of the state, describes the various forms which states have assumed in the course of history and the functions which the state exercises or claims to exercise. It must not content itself with a mere analysis of political institutions as existing at any given point of time; it must take account of the process of change and evolution and the alteration of social and intellectual environment. "It is thus a *historical investigation* of what the state has been, an *analytical* study of what the state is, and a *politico-ethical* discussion of what the state should be."*

This subject is more or less closely allied in form to other subjects viz. History, Political Economy, Statistics and Sociology.

History—Political Philosophy is indebted to history for the facts and these are the bones out of which the subject of Political Philosophy is built up. But history here must be taken in a wider sense of Universal History. Political Philosophy cannot be built up on the history of any one country. At the same time the history only of organised and civilised communities affects the subject. In fact the relation between these two subjects is so close that without the knowledge of history Political Science is likely to be mainly theoretical. Prof. Seeley rightly observes, 'Political Science without history has no root' and 'History without Political Science has no fruit.' He goes so far as to write, "The science of politics is the one science that is deposited by the stream of history (*i.e.* Universal history ?), like the grains of gold in the sands of a river," by which he means probably that

* Gettell, Introduction to Pol. Science p. 4

the gradual development of the science is traced through the histories of different organised communities. Of course this science has no interest in the military, commercial or economic aspect of history, neither in purely narrative aspects of history. It is Constitutional history in particular which forms the basis of political science.

Sidgwick is opposed to See'ey in this respect. He says that the chief aim in the study of Political Science is to determine 'what ought to be' as distinct from 'what is.' Hence according to him historical study of this science can occupy a very subordinate place. History records good and bad actions of men but does not discriminate between them and thus does not help us in realising the best end. Another drawback is that it is a record of constant change, and a policy which might have been considered best and satisfactory long ago may be entirely unsuitable to the modern requirements under new conditions and circumstances. Such is Sidgwick's view.

Political Economy—The relation between Political Economy and Political Philosophy is this : Political Economy deals with the condition of the wealth and the prosperity of the country ; Political Philosophy deals with the conditions of the state or government of the civilized or organised country. Still the intimate relation between these two may be stated thus : the production and distribution of the material wealth of a country is to a large extent modified by the form of government and the institutional basis of economic life existing in that country ; again the economic life and conditions of a community shape largely its form of government and political institution, *e.g.*, the government of a mainly manufacturing district or country differs from that which suits a mainly agricultural country. "The state, in a word, is conditioned by its economic environment."

Statistics—Statistics is the science of numerical generalization based on the development of the country in population, product, wealth, taxation etc. Statistics are not mere figures giving total, but are the result of many calculations and may be taken as conclusion of reasonings about the constitution and prosperity of a country expressed in the form of figure. This comparative study of figure and the conclusions to which it leads are excellent data for checks upon influences made as to the condition of the community which is being studied for the purposes of Political Philosophy, as far as these affect population, revenue, general wealth of the community and the rolls of birth and death

Sociology—It deals with the growth and development of society and includes that growth from its humblest beginnings to its most complex structures, whereas Political Philosophy deals with the growth of government in an organised and civilised community. 'Sociology, defined as the science of social phenomena, includes all of these social sciences'—*i. e.*, economics, politics, history etc. Hence Paul Janet's definition: "Political science is that part of social science which treats of the foundations of the state, and of the principles of government." That political science is only a branch of that higher science sociology would be clear from the definition given by Sidgwick—'Sociology deals with *human* societies generally: Politics deals with *governed* societies.'

Ethics and politics—Ethics concerns with the conduct and character of the individual. Politics with the state and consequently with the members composing a state. Political laws deal with outward acts only whereas Ethics reckons both outward and inward or mental actions *i.e.*, feelings of men.

But Politics has in general an ethical aim. The state is a moral entity and the fundamental principle should be how to produce *good* men.

Ethics starts from the standpoint of goodness whereas politics is concerned with the standard of utility. Hence the end of Ethics is higher than that of politics. Another distinguishing feature is that while political laws may be enforced by the sovereign authority, ethical laws cannot be so enforced.

Political Science may be either *special i.e.*, it may treat of the constitution of a particular nation or of a particular state, *e.g.*, Rome, or it may be *general i.e.*, it may treat of the universal conception of the state.

A distinction is often observed between *Political science* and *Practical politics*—the former is theoretical and consists in forming best ideals of the form of state and drawing logical deductions from them. Whereas Practical Politics relates to a particular period and to particular problems that come up for discussion. It concerns with definite issue arrived at after arguing for and against some definite political course or action in a particular period.

§ 3.—Methods.

The methods of studying the state are mainly of two kinds :—(1) Philosophical and (2) Historical. The former deals with pure theory of the idea of the state, the latter follows up the enquiry from the historical standpoint and utilises the methods of generalization from historical data.

The second method is the most satisfactory ; the former tends to abstraction.

Philosophical Method—Politics has a distinctly ideal side. It might almost be said to have an ethical character as it deals not only with Political development but also with the moral structure of the society. But there must always be a real basis in Politics, that is, the system of doctrines must have relation to the facts of life. The *truly* Philosophical Method starts from some independent idea about human nature

and draws deductions from that idea as to the nature of the state, its aims and functions as well as to what sort of institutions and laws will tend towards the realization of that idea. It then sees that its deductions coincide with actual facts of history. It thus connects ideas with facts. The real danger of the Philosophical Method is that it *often* follows the flight of imagination and forms theories which have no foundation in historical facts, the result being that the Method becomes mainly ideological. A good example of abstract theory is Plato's *Republic*, which was purely imaginary. Abstract doctrines of the state prevailed at times of Revolutions *e.g.*, at the French Revolution the formula 'Liberty, Equality, and Fraternity' seemed to embody a theory of the state but it was an impracticable theory.

The perversion of Philosophical Method is Ideology which pays little or no attention to facts. The weak point lies in this that an abstract idea is always apt to become a popular catchword and at times when mobs are easily excited, they do much harm.

The Historical Method—It traces the true development and history of the idea of the state as recorded in the attempts of different nations. The *truly* Historical Method is based upon actual historical events and their evolution, *i.e.*, it states that in past ages everywhere the essential characteristics of Law and Government were such, the aims of Government were directed towards this and that end and that in future also the same thing is to continue; but in doing so, it reckons the inward connection 'between past and present, the organic development of national life and *moral idea* as revealed in its history.' This Method starts from the actual phenomena, but regards them as living, not as dead. It recommends that the state, its aims and ideas, its laws, institutions and Government should not be stationary but should keep pace with the

progress of time and be suitable to the circumstances and the needs of the time. The danger of this method is that in following the paths of history, we may forget and lose *unity* in abundant multiplicity of facts and the method tends to become merely empirical. The great basis of the Philosophy of the state has been Aristotle's 'Politics' which has over 2000 years been accepted as a well of political wisdom. Cicero was perhaps the greatest Roman writer on Politics. He followed Greek ideas and Roman laws. The greatest English Political Philosopher in the Elizabethan time was Bacon and he deserves to be ranked as a Political Philosopher, although he was hardly an original thinker on Politics. Rousseau adopts the Philosophical method rather than the historical ; similarly the English Philosopher Bentham studies Politics on the Philosophical method.

The perversion of historical method is Empiricism, which sticks too closely to facts, the result being that progress is impossible as this method has an undue regard for precedent and favours the idea that what has been in the past ought to be now and for all time to come.

Comparative Method—Side by side with the above two methods we may place the comparative method without which the other two methods are imperfect. It is by a comparative study of those historical data relating to State, its essential nature, the various organisations and forms it assumed at different times and in different countries, the functions it claimed to exercise in the past or tries to claim in the present—that we can come to a reasonable conclusion as to the best form of State, its conditions, functions aims etc.

It is a mistake to suppose that the three methods are antagonistic. They are really supplementary and the best method for the study of the Political Science is a combination of all these methods.

CHAPTER II.

§ I.—The State.

MANY Centuries ago, Aristotle described 'Man is by nature a political animal.' By this he meant probably that men are naturally gregarious and sociable. Led by this social tendency, men joined themselves together into families, tribes and states. Aristotle describes how families gradually become organised into state and as civilization advances, the influence of the state becomes gradually more important. Men become willing to admit that the state may make unlimited demands upon them In certain circumstances they realise that they may even be called upon to die for it. We shall speak again of this saying of Aristotle in connection with the Evolutionary theory of the origin of the state.

But let us now ask what is the conception of a state? Bluntschli makes a distinction between the conception and the idea or ideal of the state. By *conception* he means nature and essential characteristics of *actual* states ; whereas *idea* or *ideal* of the state according to him, means a picture of imaginary perfection which the state has not as yet reached. It is not however, an important distinction. Idea and Conception mean in English almost the same thing.

General conception of the state or characteristics of all states :—

1 **A number of People**—Every state is a combination of a *number* of *men* arranged together for the purposes of common life. It is more than a family or a clan. There is no fixity about the number of its citizens. A state does not cease to be a state because it is large.

2. **A fixed territory**—But it is essential that a state should have a *fixed territory*. A nomadic people is not a state *e. g.* some Bedaween tribes of Arabia which wander from camping-ground to camping-ground and are still survivals of the nomadic stage of a society.

3. **Unity**—The people forming a State must have a certain amount of *co-hesion* to bind them together. It is desirable that the members of a State should be bound together by something more than a mere tie of *common subjection* to the central authority of the State. If the *tie* arises from a community of blood or language or religion or historical tradition, the unity becomes a real or organic unity, otherwise it is mechanical or artificial.

4. **Government**—A State cannot exist without a Government which is nothing but an organisation or machinery of the state. 'It exercises the *Sovereign powers* of the State and through it the purposes of the State are formulated and executed.' In every state there must be *a distinction between rulers and subjects*. Without somebody in *highest authority* in a State there is anarchy. [What is meant by 'Sovereign powers' of the State, or in other words, what is meant by Sovereignty? It will be dealt with later on. Enough here to note that,—It is an original, absolute and unlimited power of a State over its individual subjects. This is internal Sovereignty. Externally, it means that a State is completely independent of the control of any other State.]

5. **State—an organism**—The state is not to be regarded as a mere congeries (heap, pile) of individual citizens, but it is a *living and organised being with a consciousness of its own.*

In fact, we may say that the *state is an organism*. But what is meant by it? It means, *first of all*, that the unity which is an essential element in the state, is of an organic nature, that is to say, is like the unity of the different parts of an organism

like an individual. There is no unity so close as that of an organism. If one part is injured, it affects the whole system. *Secondly*, the term organism indicates that the various parts or members of the state have their different functions just like the parts of a living organism and these parts are united together with one another as well as with the state as a whole exactly in the same way as the different parts of a living organism do. *Thirdly*, the state is like an organism because it is a union of soul and body, of vital forces and material elements, of will and active organs.

There is a national spirit which is more than the combined spirit of the individual citizens. The national will is almost a living force in an organised community and although it may not often receive an emphatic expression, it is a reality in time of danger.

Lastly, the state is like an organism because it has the power of development and growth. In this respect the state differs from a natural organism. "The life of plants, animals and men grows and decays in regular periods and stages, but the development of states and political institutions is not always regular. Again the growth of a state is not a mere natural growth like plants but like the growth of any other intellectual and moral personality. Its progress is the consciously exercised intellectual and moral power of the people, composing it who, acting in their corporate capacity have the power of forming comprehensive plans and striving after moral ideals" Hence the statement that the state is a moral and natural organism

Natural states have a development of their own ; but that development is sometimes affected by the advent of a powerful personality, *e. g.*, Napoleon who bent France from its natural position into becoming the instruments of his ambition. [The state is a moral and spiritual organism,—is largely a German opinion of the state.]

6. Personality of the State—A person in the legal sense is a right-and-duty-bearing being *i. e.*, he has certain rights and duties. Hence he is said to possess personality. In as much as a state is a right-and-duty-bearing entity, it is *invested with a personality*. In the eye of the law it has rights and is liable to duties. This personality is the most essential characteristic of the state. We see an instance of this in International Law. Here different states enter into relations with one another as so many distinct persons.

It is only when the rights of the people are recognised and granted that the personality of the state can be reckoned. In earlier stages, primitive states were divided into two sections, the prince or ruler on one hand, and the subjects who were mere chattels, on the other.

The state when put on its mettle, exhibits a vigorous personality *e. g.*, if another state encroaches upon its territory it retaliates—its honour is touched and nothing but blood will expiate the dishonour—hence come wars between nations.

Def. of a State—Now we are enabled to define a state. A state is a numerous *assemblage of human beings*, generally occupying *a certain territory*, amongst whom the *will of the majority*, or of an *ascertainable class* of persons, *is* by the strength of such a majority, or class, *made to prevail* against any of their number who oppose it (Holland). The state is the *politically organised impersonation* of the *people* of a *given country* (Bluntschli). In these two definitions we see the principal elements, requisite for a state, present in their entirety.

§ 2.—The Universal State.

THE HUMAN IDEA OF THE STATE.

The Philosophers think not of a national state but of a universal state, as if it were a custom. The perfect state is

the visible body of humanity. But as a matter of practical reality this state does not exist, for the majority of mankind are not yet politically organised. But when all nations are as highly organised politically as England or America, then it will be possible to think of a world-wide state.

Alexander the Great tried to establish a world-state. But his early death frustrated the idea. The Roman Empire made a more important experiment in the direction of Universal Empire. But Rome could not conquer the Teutons and in course of time it succumbed to them. The Holy Roman Empire was a similar experiment in the middle ages with the church as the head of the confederation of the states. But the tendency of separation was too strong for it, and the central power did not venture to assert itself. Napoleon Bonaparte made an attempt to form a world-empire; but Britain successfully opposed him, and after the Russian disaster, the dream fled. From that time there has been no similar attempt; but time is producing international consciousness of mankind and in due course may lead to some of the features of the Universal State *e. g.* International Law and Arbitration. [The recent establishment of the permanent form of arbitration at the Hague is a step to international federation but only one step]. Thus the Universal state is up till now chiefly an idea.

Some Political thinkers *e. g.* Laurent, have declared that the idea of a Universal Empire is an impossible one for the following reasons :—(*i*) the Universal Empire would be a Monarchy and such a kind of rule would be incompatible with the Sovereignty of the various states; (*ii*) the idea is unnecessary for states have not the defects of individuals and therefore do not require to be united under a common rule; (*iii*) the idea is impossible because states will not readily yield to a higher power and if there should be a power strong enough to compel

obedience, such a power would be oppressive and would interfere with the development of the different nations.

In reply to these objections we may urge :—(i) it is not absolutely necessary that the Universal state should be a Monarchy ; it may be a Republic or a Federal Empire in which the various members have a certain amount of freedom ; (ii) states have their defects as well as individuals and require a central authority. This necessity is illustrated in the demand for a Universal law of nations ; (iii) the control of a Universal Empire need not be more than a general control leaving a great amount of freedom to the states composing it. The Universal Empire will be less powerful in relation to the various national states than these are in relation to their individual members. Therefore oppression need not be feared. The Universal Empire will not check development, and on the other hand, there are many directions in which it is required and in which full development cannot be reached within the national state.

§ 3.—Political theories relating mainly to the idea and end of the state.

At any given time Political Philosophy, if analysed, will be found to consist of a number of theories, more or less systematic, representing current conceptions of political principles. Often they are ideal speculations as to what the state should be. Sometimes they aim to describe the nature of a state by analysing existing manifestations.* Let us enter into a discussion of the different theories at various stages of European History.

* Gettell, Introduction to Pol. Science p. 72.

1. **Hellenic theory of the State**—Political Science does not begin till we come to the Greeks. To the Greek world the nation-state was quite unknown. All the Grecian states were *city states*. Citizenship meant that a man possessed the freedom and privileges of a City. Aristotle in his *Politics*, while he considers how large a state ought to be, emphasises the smallness of the Greek City state. All the citizens must be able to gather in one place to listen to a public orator. All the citizens could take part in matters of Government and this was possible only in a City state.

The state was considered not merely as a piece of machinery to secure the property and prosperity of citizens, but was regarded as something other than and higher than the individuals composing the state.

The interest of the individual was regarded as entirely subordinate to that of the state. The citizen counted for nothing but as a member of the state.

The entrance to citizenship was not thrown open to all. There was a large body of slaves who worked for the free citizens.

The Hellenic idea of the state was mainly ethical. Plato considered the state to be the highest revelation of human virtue. The wise ought to rule and the brave should protect the community. "Not life, but a good life," says Aristotle, "is the object of the state."

There was as yet no distinction between law and morality The state undertook even the moral guidance of the citizens. There was no limit to the interference of the state.

2. **The Roman theory of the State**—The Romans had a greater talent for law and politics than any other people. The fundamental ideas were doubtless Greek but the system and practices of Roman law were essentially Roman. By their application to the wide-spread empire, the Roman law

has influenced the western world right down to the present day. Cicero may be taken as a legal philosopher. ***The Roman contribution to the history of Politics is that they put the political development on a legal basis*** whereas it had previously been chiefly ethical.

They developed the idea of positive law, distinct from religious and moral sanction.

(*a*) The Romans made the state into a *legal organisation* but they did not adopt the Greek tendency of crippling the individual and the family in the interests of the State. The Romans left private rights and family rights comparatively free but subordinated everything to the general welfare of the State.

(*b*) The Romans recognised the conception of the people and considered the state as the people organised and the will of the people as the source of law.

(*c*) The Roman state was destined to become a model for the western world. It first emphasised the *Jus civile* or civil law (citizen right) and extended this into the *Jus gentium* or international law (right of nations). These were both distinct from personal right.

3. The Teutonic theory of the State—The Romans were first checked and at last overcome by the Germanic tribes. The Teutonic civilization displaced the Roman. The Teutons had not by nature the political genius of the Romans but they had a vigorous independence and their *political contribution was the introduction of what might be called Parliamentary idea*. Montesquieu has said that the germs of Parliamentary institution are to be found in the forests of Germany.

The Teutons had not the faculty of making laws as the Romans had. They based law upon personal independence rather than on legislative enactments. Thus they gave great powers to individuals *e.g.*, the kings, the presidents of courts or

councils. It was merely a personal law that was at the foundation of the Teutonic system. The note of personal law is individual freedom and the law of the Teutonic tribe was really a generalization from the wishes of its members. The Teutons had no Political Philosophy of their own: all their institutions were penetrated with private law.

4. **Renaissance theory of the state**—The Roman church perpetuated the traditions of the Roman Empire in many respects—in institutions, law and language. The Old Roman Empire became the Papacy. Still, in another way the Roman influence was felt in the empire, for Roman law spread from Italy into France in the 13th century and to Germany in the 16th century. Thus Roman ideas of the state prevailed among the learned.

Religious belief absorbed the attention of mediæval thinkers, and when political thinking revived, it was concerned chiefly with the proper relation of church to state. Each claimed that the other was encroaching on its proper sphere, and rival theories arose. The papal party claimed superiority for spiritual power as more directly conferred by God. The supporters of imperial power also claimed direct divine authority and demanded responsibility to God alone *

The rival claims and the consequent conflict between the Papacy and the Empire ultimately weakened the authority of both and a number of new conditions arose which led to new theories. Strong national states grew everywhere; military feudalism declined and its place was taken by commerce and industry.

In the second half of the 15th century came the Renaissance which was really a movement of enlightenment and culture accompanied by the revival of the Greek language

* Gettell, Introduction to Political Science p. 76.

and by the restoration of art and science and the checking of the Scholastic Philosophy. It was the age of Humanism. The Popes encouraged and patronised the new movement of culture One of the subsidiary results of this movement was the revival of Aristotle's 'Politics' and from this time writers were busy expounding, on rational principles, the origin of the state and political institutions. Among these writers none is more epoch making than Machiavelli in his 'The Prince'—the immoral product of an immoral age.

Princes were assigned a certain imperium (right to rule) and among the extremists tyrannicide was advocated as a virtue, but the whole of the Renaissance movement in politics as well as in literature was confined to the few cultured and leading men. The people as such were entirely outside its influence.

'In his distinction between public and private morality, his justification of conquest, and his recognition of nationality Machiavelli anticipated essentially modern ideas'

5. The Modern theories of the state—*When does the modern period begin?* Lodge makes modern period begin with 1453; so did Arnold; but other writers give other dates. Bluntschli argues against 1453 on the ground that it is too early for anything that can be called modern-history. Similarly he declines to take the Renaissance as the beginning of modern history on the ground that it was more a preparation than a transition. It was a revival of the old learnings rather than the introduction of a new movement. Further, Bluntschli dismisses the Reformation of the 16th century with the remark that Reformation was simply religious and that it did not produce any change in the world of Politics commensurate with inauguration of a new period. The Revolution, in England, of 1683 has been suggested as a possible date but Bluntschli

considers that it rather terminates the mediæval than commences the modern period. The French Revolution is claimed by its followers as the beginning of modern history but Bluntschli considers that this date is too late, for the modern spirit had begun before the Revolution which was caused in part by the writings of Rousseau and Valtaire So Bluntschli seeks to find the beginning of modern history between 1688 and 1789, and following Buckle,, he hits upon 1740 as the date when the modern history may be said to begin—that was the year of Frederick the Great's accession to the throne of Prussia. Nevertheless, we must go back to an older date for the beginning of modern history and probably the Renaissance period will answer our purpose better than any other.

It is foolish to attempt to fix the beginning of modern history to any one given year. It is much better to define modern history not in reference to a date but in reference to institutions. What institutions are modern as opposed to mediæval? (See p. 22.)

In modern political thought instead of one we have a number of theories as to the *nature* and *end* of the state.

(*a*) Machiavelli regarded the state as the noblest product of human spirit and he took public law as a means to secure the welfare of the state. (Compare in this connection the *Utilitarian theory* of Bentham which justifies the authority of the state on the basis of necessity, and sets as its ideal the greatest good of the greatest number). Machiavelli was the first to make Political Science independent of theology.

(*b*) Grotius bases the state on human nature. He looks to the individual and almost asserts that the basis of the state is contract between the individual and the state.

(*c*) **The Law of nature**—State was considered as a grouping of individuals based on association. Modern Political theory has over-emphasised the individual. Locke, Kant and

Fichte defend the theory that the state is based on social contract. But this must not be understood to refer to any definite contract. The state consisted of a group inhabiting a town probably first based upon blood-relationship with an admixture of outsiders, notably war-captives. This group had no social contract but made regulations limiting individual freedom for the interest of the general welfare

(*d*) **System of authority**—The state came to be regarded about 1740 as the sphere of the power of a superior and the government was indentified with the state. The rights of the subjects were ignored. Only princes and government officials were of any importance and the subjects were regarded as a passive mass.

(*e*) Kant spoke of the legal state as if the legal security of each individual were its chief duty. *What does Legal state mean?* If this means that the state is only an institution for protecting the rights of individuals, the state becomes a servant of private persons which is absurd. Accordingly it must mean something like organising the rights of the community, but the state has a further function—it has to foster public welfare *e g.*, trade, civilization etc. Sometimes the state has also a religious basis. If so, does 'Legal state' harmonise with this? The phrase Legal State is unfortunate and is now replaced by 'constitutional state,' The State has two aims :—(1) Justice and (2) Public welfare. The administration of Justice is handed over to jurists whereas the Public welfare is the care of the statesmen and the chief concern of the government.

(*f*) **Organic theory of the state.**—The Historical School has drawn attention to the organic constitution of the state. Frederick the Great emphasised the growth and decay of the states and sought to make a law of their rise and fall. Savigny defined the states as the bodily form of the spiritual community of the nation. Burke in the French Revolution

regards the state as a contract of eternal society. The idea hat the state has a spiritual nature is widespread and lofty. This organic theory of the state tries to drop the distinction between the individual and the State by amalgamating them into one and viewing the state and the individual as part and parcel of the same thing, both of them being included in what may be called the social organism. But we have seen while discussing the 'General conception of the state' that the state is not a natural organism like plants or animals. (*cf.* The state is an organism describes in Chapter II.)

(*g*) Hegel thought that the state (of which Prussia he took as the type) was founded upon a rational basis—he did not make it a person. Modern writers rather emphasise the national characteristics of the State.

The Chief differences of the modern states from the ancient and mediæval states.

Distinction between Ancient and Modern states :—

(1) Ancient States refused to recognise personal rights in man. Half the population were slaves, who had no rights. Modern States recognise rights of man, abolished slavery. Man is a creature with rights. Labour is free and valued.

(2) Ancient States supervised all relations of life. Modern States restrict themselves to legal and political matters. Religion and worship are left to the Church.

(3) In Ancient States man had rights only as citizens. In Modern States man has rights as individuals.

(4) In Ancient States public authority was directly exercised by its holders. In Modern States it is vested in a representative body chosen by the citizens, or a body recognised by the constitution.

(5) In Ancient States the same assembly exercised different functions *e. g.*, Legislative and Executive. In Modern

States there are different bodies for different functions (Legislative, Executive and Judicial).

(6) In Ancient States, the state was limited by other states. In Modern States all states recognise International Law.

(7) Ancient state was a city state. Modern state is a national state.

Distinction between Mediæval and Modern states :—

(1) In mediæval states the state-authority was derived from God *e.g.*, Islam was a Theocracy. In modern states, it is founded upon *human nature.* Also the mediæval church traced its power from God

(2) The modern state is a human institution and is based on Philosophy and History rather than on Theology.

(3) In mediæval states there was unity of creed or community of belief which was the basis of citizenship. Now in modern state religion has nothing to do with the status of the citizens.

(4) In mediæval times, Church was regarded as higher than the state. In modern times the state is independent of the Church and supreme over it.

(5) In mediæval times Church influenced education. In modern times the tendency is for the state to control the school entirely.

(6) In mediæval times feudal system prevailed—God, King, Princes, Knights—this was the order of succession. In modern times states are founded on a national basis.

(7) In mediæval states representation was according to Estates, in modern states the basis is democratic—all classes are embraced.

(8) In mediæval state central power was weakened by the number of independent lords. In modern times the state is central and the lords have no independent powers to rule

(9) In mediæval times custom was the chief source of law. In modern times the state is conscious of its own nuture and acts on principles and reason. Now Legislation is the source of law.

§ 4.—Leading Theories as to the origin of the State.

1. The state as a divine institution.—This theory of the origin of the state is known as the Theocratic theory. Its meaning is that the State is looked upon as having its origin directly from God. God either rules it directly or indirectly. In the earlier stages of the Jewish kingdom He was supposed to rule it directly and there was considerable opposition when it was proposed that an ordinary king should be appointed. The favourite conception in the middle ages was that God ruled the nation indirectly. The Emperor a lone was supposed to derive his authority directly from God. One consequence of this was that the state was placed, to a certain extent, in a position subordinate to the church. Another consequence was that uniformity of religious belief was demanded from all the members of the State.

This theory is good in that its gives great dignity and authority to the State. The State is raised above the level of a mere human construction. Its moral character is also preserved by being associated with the righteous rule of God. There are, however, certain objections to this theory: (*a*) the theory is used to support one particular kind of government because God rules the world as a king. All kinds of government except the monarchical are regarded as illegitimate; (*b*) the authority of the king is apt to be exaggerated. He is God's representative and therefore his authority is identical with the authority of God. This was the extreme position taken up by

Louis XIV who spoke of himself as the living image of God. This is however too high a position for a mere human being. Some people attempt to get over this difficulty by separating the authority exercised from the person who exercises it. This is however, not a possible distinction. If the authority is Divine the dignity of this authority must be shared by the person who exercises it. The king will still be tempted to regard himself as the personal representative of God; (*c*) the theory is an obstacle to progress and reform. There is a Scriptural saying to the effect that "the powers that be, are ordained of God." This saying may, however, be pressed to the extent of declaring all changes to be wrong. The saying has been taken to justify all existing institutions, no matter what their origin and character may be. The ruler acquires a sacred divine right and however badly he may rule, resistance of any kind becomes a sin. (*d*) so much attention is paid to the responsibility of the ruler towards God that very little attention is paid to the responsibility towards his subjects. He is not regarded as accountable to his subjects for any of his actions.

II. The Theory of Force—This theory is that state organization is mere brute force. The state is based on, and takes its origin from, the right of the stronger Might is right. Wherever power exists there exists also the right to rule.

This theory would justify despotism, and in fact, any oppression of the weak by the strong, however arbitrary that oppression may be. It is in contradiction to the idea of freedom and also to the idea of law which is a spiritual and moral notion, and is more fundamental than the idea of Force The theory is correct only as a historical description of what has actually happened and as a counteractive to the theory of contract which bases the state on the mere arbitrary will of individuals. We should also be careful to remember that

whatever may be is origin every kind of government rests on a certain amount of force. Even democratic governments depend on the submission of the minority to the *force* of the majority. Still mere force has never for any considerable length of time been the basis of the state. The state has really to base itself on right. It does not create by brute force its right to exist but is itself the servant of right. Every government must in the long run conform to the customs and opinions of the people. The real force on which a government rests is the force of public opinion. It is from the common will that it derives its strength.

III. The Theory of Contract—This theory has been especially prominent in modern times, whenever and wherever the bonds of absolute authority have been so far relaxed as to make possible the assertion of the rights of individuals. The Individual is the basis of the state. He has certain inherent rights and he voluntarily resigns some of these rights in order that he may retain the rest more securely. He makes a contract with other men in order that they may live together in a society in which their individual rights shall be mutually respected.

This theory has many forms. Probably all forms agree in supposing some previous *state of nature*, in which men existed merely as individuals and outside of any political form of society. Out of this state they contracted themselves into the state of civilised society.

A theory somewhat similar to this is found among the Sophists of Greece and in the writings of Epicurus. In modern times in England it is chiefly associated with the name of **Hobbes** who flourished in the 17th century. According to him, the *state of nature* is a state of unlimited competition in which every man's hand is against his neighbour. Each man has unlimited rights and no security. In order to obtain

security it is necessary to appoint one man or assembly to take charge of their rights and make enjoyment of them possible. **Hobbes's** theory leads on to absolutism. After the Contract has once been made the individual has no longer any rights except those which the sovereign confers upon him. Revolution is altogether unjustifiable. Rebellion against the sovereign would simply mean relapse into a state of nature and this relapse would be most undesirable There is no middle position between absolutism and anarchy.

'Hobbes's chief defect was the failure to distinguish between State and Government. He did not realise that the form of government may be changed without destroying the State, and that existence of Sovereign power does not necessarily mean the absolute authority of the particular persons who exercise it.

Locke did not take so dark a view of the state of nature as **Hobbes** did. There were certain rights which existed in a state of nature and these rights were not unlimited in their character. Men enter into society in order that they may better secure these rights to liberty and property, but when they enter into a political society they do not absolutely surrender their rights The law of nature is not abolished. **Locke** prefers to use the word 'Compact' rather than the word "Contract" in order to show that the arrangement made is not so absolutely binding and irrevocable as it was from the point of view of **Hobbes**. Again, with **Locke** the resulting sovereignty is not absolute, the people still retain their rights and are justified in deposing the sovereign if he does not respect these rights.

Rousseau draws a very favourable picture of the state of nature. Men, uncontaminated by civilization, were by nature good. They lived in small groups, their wants were few and easily satisfied. They then entered into larger groups and a

contract became necessary by which each man was to receive the protection of all the others and was, on the other hand, to submit himself to the general will. But this contract was the source of evil. Selfish and unscrupulous men took advantage of it in order to accumulate all wealth and power in their own hands. The original terms of the contract were forgotten, especially was it forgotten that political power had originally been drawn from the people. The remedy is to realise that the sovereignty really lies with the people. In **Rousseau's** own words 'the people wills, the king executes' As the people originally made the Contract so they have the power to break it and to reform it in a new way if their rulers do not please them. According to **Rousseau's** doctrine Revolution would be justifiable and would correspond simply to a modern change of ministry under a constitutional government. Ministers who do not please the people would simply be replaced by those who did please them.

In its most general aspects the Social Contract theory would seem to flatter the pride of individuals and to be unduly favourable to anarchy and revolution. On the other hand there is nothing in it to guard satisfactorily against despotism. It does not prevent the oppression of a minority by a majority. In the French Revolution frightful oppression was exercised by the majority upon the minority of the nobles. We have seen also that in **Hobbes's** hands the theory became a justification of absolute despotism.

"With **Rousseau** the doctrine of the Social Contract, which in the hands of **Hobbes** was made a weapon of defence for absolutism, and with **Locke** a shield for constitutional limited monarchy, becomes the basis of popular sovereignty." (Leacock.)

The following objections may be brought against the theory: (i) the theory is unhistorical. No such state of nature ever

existed such as **Hobbes, Locke** and **Rousseau** described. People had never been outside of some kind of political combination. They are by nature political. No existing state has been formed by the free contract of individuals. Even the American states were founded by those who brought with them the traditions and political aptitudes of the state from which they had come out. The truth is, that the Social Contract theory is an extreme example of the purely philosophical method of Political Philosophy. The facts have been to a great extent disregarded for the sake of the theory.

(ii) The theory does not explain most forms of democratic government. The minority does not make a contract with the majority but is under the rule of the majority.

(iii) The theory is illogical—In order to construct the state it presupposes such freedom and equality as could only be possible to individuals who are already within a state. Further, the individuals as such can only make contracts which will result in the creation of private rights. They could not make contract about political rights unless there were already a state between which and the individuals the contract could be made. Contracts can have a political character only if there is already a community above these individuals.

(iv) The theory is, as we have seen, practically dangerous. The state and its institutions are regarded as the result of individual will; therefore they have not sufficient authority when they happen to contradict this individual will. Further, the theory provided popular catchwords and formulæ which caught hold of the imagination of the people and led them tc great extremes of political fanaticism. The way was open for anarchy and revolution. The dangerous tendencies of the theory were specially manifest at the French Revolution. Though historically untrue, yet when viewed analytically the theory may be made to "express the proper interpretation of

the relations between the individual and the state. It proposes as the justification of the state a voluntary exchange of services between the individual and the political community. The individual renders obedience and receives protection.' Kant says, "The contract is not to be assumed as a historical fact, but it is a rational idea which has its practical reality in that the legislator may so order his laws as if they were the outcome of a social contract."

IV. True origin of the state—(Historical or Evolutionary view of the state)—This theory is that the state is based upon the natural sociability and political consciousness of man underlying the great saying of Aristotle—man is by nature a political animal. Although human nature is infinitely various it has also the tendencies of community and unity. There is an inward impulse to society and this produces an external organisation in the form of the state.

"The proposition that the state is a product of history," says Professor Burgess, "means that it is a gradual and continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind." "The state is not an invention; but an evolution a gradual growth.....Man's capacity for associated action and social relationships of all kinds have proceeded by a gradual development."

This social consciousness is at first implicit and unconscious. It gradually however becomes explicit and men give themselves deliberately to political activity. First of all, the leaders amongst the people become conscious of the state and its requirements and then this consciousness is shared by the people as a whole.

This view combines in itself the truth of all the other theories. The state is indirectly divine because it is God Who has implanted the social impulse in mankind. Force

is recognised but it is the force which rests upon the common impulses of human nature and does not come from any arbitrary source. We recognise also in this theory the rights of individuals but also the common will of the people as a whole. The individuals are never to be found in isolation from one another. The will of the people expresses itself in law and order and is not properly to be described as a contract

The state is necessary for the complete development of man. It is not, as many would regard it, useful only for the restraint of evil passions. It is rather a positive good necessary for the perfection of common life.

In connection with this gradual development we must remember the Patriarchal theory which states that the Patriarchal family in which the Patriarch had the absolute control over his descendants, was the beginning of human government Even Aristotle says—the family arises first;—when several families are united, and the association aims at something more than the supply of daily needs, then comes into existence the village—when several villages are united in a single community perfect and large enough to be nearly or quite self-sufficing, the state comes into existence. Since his time this theory as representing the origin of the political institutions gained ground.

In opposition to this theory there is the matriarchal theory which we may safely pass over.

Prof. Leacock gives the following general features of Political Evolution :—

(I) A progressive increase in the extent of territory occupied by a single state, than was the case in primitive governments.

(II) Increasing fixity and certainty of the action of the State. The rule of a primitive government is uncertain and irregular.

(III) Growth of political consciousness—The earlier stages of social union are largely intuitive and unconscious.

(IV) Separation that has been effected between the religious and the political aspects of society.

(V) The growth of democratic government,—the participation of the great mass of the people in political control, is the most important feature in the development of the State. But this has been possible by the recognition of the principles of local self-government and representation—ideas quite unknown in ancient states.

In addition to these, the idea that the State should carry on certain activities which public welfare demands, and which individuals cannot or will not undertake, is gaining ground. Education, sanitation, the cares of defectives, and the punishment and prevention of crimes are illustrations of this line of growth. But this state interference, now eagerly demanded differs from the bitterly opposed state interference of earlier centuries. That was executive in nature, irregular and often capricious in enforcement, and removed in sanction from popular control. The expanding authority of modern state is legislative in nature. (Cf. Factory legislation.)

CHAPTER III.

§ I. Law.

A distinction must be made between law in general and positive law. *Law in general* may include moral law as the expression of the will of God, but *positive* law in a state is a *command* to do or abstain from doing a certain class of acts; and this law must be issued by a duly authorised person or body and infringement of the law must be punished by a penalty. Positive laws are issued by the Sovereign or the authorised body that takes the place of the Sovereign in modern times. Law is defined by Woodrow Wilson, as the will of the state concerning the *civic conduct* of those under its authority. Sidgwick defines Law as a body of general directions as to the conduct of members of the community for disobedience to which a penalty of some kind will normally be inflicted by the Government. Thus we may say that Law is of the *nature of a command*, relating to the *corporate life* and it is a command which may be *enforced* by a *Supreme Government*.

We may understand better what is meant by saying that law is of the nature of a command when we contrast it with natural law in the scientific sense. A natural law is something which is discovered about nature by careful and repeated observations. 'Natural laws are our ways of stating the general propositions we have arrived at in regard to nature.' It is absurd to speak of a law of nature being either changed or violated. The laws of nature cannot change in the sense of being given up by nature. When we say that a law of nature changes we mean that a certain interpretation which we previously held is found to be inadequate and must be exchanged

or another ; similarly to say that a law of nature is violated is just to say that our previous interpretation of nature is not quite accurate. Political laws on the other hand are of the nature of commands. They are rules of conduct laid upon the individual members of a community by the Government of that community. They are not simply statements of what the members of the community actually do, they are statements of what they ought to do and must do if they are to continue to live in that community. Thus it follows that such laws may be both changed and violated ; they may be changed whenever the views of the community change as to what is conducive to its *corporate welfare.* They may also be violated though not with impunity.

This brings us to a second point *viz.*, that a law is a command *relating to corporate* life. Private law has to do with the relations of individuals to one another and public law with their relations to the state as a whole. It thus differs from **Ethics. Ethics** touches all the concerns of the individual and does not confine itself simply to the relations of one individual to another. It deals principally with the conduct and character and mental habits of the individual. Law has to do with *outward conduct* only and is the cognisance which the community takes of this conduct. Holland's definition of positive law gives prominence to this point *viz.*, external conduct. He says—A positive law is a general rule of *external* human action enforced by a Sovereign political authority. It necessarily follows that many things considered morally wrong are not prohibited by law. Falsehood, unless under oath or in fraudulent contracts, is immoral, but not illegal. Another distinction between Law and Ethics is that while law is enforced by the power of the state, Ethical rules are enforced by individual conscience. But still laws have, in general, an ethical end.

Thirdly.—A law is a command which *can be enforced*. If a law can be broken with impunity it ceases to be a law. A law of the state is one which can be enforced by an adequate penalty. We need not certainly go so far as to think that it is obeyed by the majority of the people simply because this penalty is attached to it. In the last resort law rests more upon good will and custom than upon force. But the members of the community must at least know that force is available for use if necessary. The rule of force and force alone is a sign of barbarism. In truth, a law does not depend for its operation mainly upon force.

Fourthly.—A law is a command imposed by the *supreme power* in the state. If we say that this supreme power lies finally in the people's will then the law will be the expression of the people's will. But wherever the sovereignty lies the important point to notice is that a command is not a law in the strict sense of the term unless it is imposed by the Supreme power in the state. If it is liable to be overturned or contradicted by a command from some higher authority, it is only a regulation or bye-law but not, strictly speaking, a law. The question of sovereignty and its law-making power will be discussed again in the chapter on sovereignty.

Sources of law—The term source has been used in different senses in different contexts. All these uses may conveniently be divided according to Salmond, the great jurist, into two classes :—

(1) The term source means the *formal* source of law. A formal source is the *authority* that gives the law its binding force. It can only be one—*i.e.*, the sovereign power in the state. "The sole source of laws in the sense of that which impresses upon them their legal character is their recognition by the state, which may be given either expressly through the

legislature or the courts, or tacitly by allowance, followed in the last resort by enforcement."

(2) The term source means the *material* source of law. Material sources supply the substance of the rules. Therefore material sources may be of various kinds for example, (*a*) the remote, causes of law, such as customs, religion, etc., and (*b*) the state organs, such as the law-courts, that provide the matter of the law.

Law originated in custom and religion and has been added to through the decisions of Judges given from time to time in connexion with particular cases. Law at the present time still rests to a certain extent on custom in the sense that it depends upon the tacit consent of the people which tacit consent again is determined by their habits of thoughts and action. A law which is entirely contrary to a universal public opinion cannot have any permanence. Again, even in modern times judge-made law (or case-law) is still recognised as an important source of law. The decisions of judges form precedents which are followed in subsequent cases of a similar character. Equity is also another source of law. (Equity is not altogether different from judge-made law but it does not refer so much to interpretations of the law as to additions to the law made by the judges in cases where there is no law applicable) Still, on the whole, we may say that the chief source of law is legislation and that the regularly-constituted Government takes upon itself the power and reserves to itself the right of interpreting the people's will, of improving upon the people's will and removing the disagreements of the various judgments. It is with the Parliament that the Supreme legal authority rests ; therefore if we can show that the greater part of the law is derived from Parliament this means that we have traced it back to the Supreme authority. Of course we must remember that the Parliament cannot contradict the will of the people for any considerable length of time.

Woodrow Wilson sums up his conception of law thus—"Spoken first in the slow and general voice of custom, Law speaks at last in the clear, multifarious, the active tongues of legislation. It grows with the growth of the community. It cannot outrun the conscience of the community and be real, it cannot outlast its judgments and retain its force. It mirrors social advance. If it anticipate the development of the public thought, it must wait until the common judgment and conscience grow up to its standards before it can have life ; if it lag behind the common judgment and conscience, it must become obsolete, and will come to be more honoured in the breach than in the observance."

Basis of Modern Law—Modern Systems of law arose from the fusion of Roman and Teutonic polity after the barbarian invasions of the fifth century. The Teutonic and the Roman legal ideas were quite different as to their nature and origin. According to the Romans law meant *commands of the state* issued through its officials ; among the Teutons *immemorial custom of popular origin* was law. Roman law was based on allegiance to the state ; Teutonic law rested on personal allegiance. Rome favoured a uniform system of law over all citizens ; Teutonic law was a personal possession, differing from tribe to tribe. Out of the fusion of these two divergent systems of legal ideas, modern systems of law have grown.

Causes of the diffusion of Roman Law—(i) During the dark ages various codes, embodying, mainly, Roman principles were drawn up at the command of barbarian leaders. One of these *viz.*, the code of the Visigoths remained the chief source of Roman law for Europe until the 11th and 12th centuries.

(ii) About that time, in the Italian cities where population was mixed and trade vigorous, need arose for more comprehensive regulation. Justinian compiled a system (*of* his codi-

fication and institutes) which was suited to the needs of the time, and schools were rapidly established for its study.

(iii) The University of Bologna, took up the study of Roman law and interest in Roman law soon spread to other Italian cities, thence to France and Spain, and later to Holland. Even in England the study of Roman law obtained for several centuries. From these schools lawyers steeped in Roman ideas returned to their homes, and supported by the kings, whose desire for centralization they (*i.e.*, these Roman ideas) favoured, soon replaced customary rules with Roman principles and procedure.

(iv) The Roman church which controlled the education of the times supplied the mediaeval rulers with their advisers and compilers of codes—the result being that Roman methods and principles were everywhere favoured.

(v) The prevalence of Latin as the speech of education and of business also furthered the acceptance of Roman legal ideas. *

Teutonic principles predominated in *Public law* which regulates the relations of state and individual ; Roman, in *private law* which regulates the relation of individual and individual.

§ 2.—Government.

In analysing the conception of the state we found that Government was an essential part of that conception. We found that the state implied the distinction between the governors and the governed and that when there was no longer any Government anarchy ensued and the state came to an end. Seeley says "the distinctive characteristic of the state is that wherever it appears it makes us of arrangement or contrivance for Government."

* Gettell, Introduction to Pol. Science, P. 125.

Government may be described as the correlative of law. We defined Law as a command imposed by the state upon the individuals composing it. We may now describe Government as the power which gives such commands, as Sidgwick says, "the essential characteristic of government as we commonly conceive it, is that it gives commands, general and particular, to the members of the community governed."

The difference between a **State** and **Government** is that the latter is an essential element of the former. 'Government refers to the person or group of persons in whose hands the organisation of the state places for the time being the function of political control.' Government is the machinery which executes the sovereign powers of the state.

But such is the inseparable connection between a State and its Government, that we often speak of 'different forms of Government' exactly in the same sense as 'different forms of State.'

Consent—If we ask further what constitutes this governing power we find that it *lies ultimately in the consent of the people.* No Government is wholly in the air, it always depends upon the consent of a certain number of people. If this consent is merely passive or if there are no organised methods of expressing consent or objection then we have the kind of Government known as despotism. If the people actively express their opinion and have organised means of doing so then we have Government by assembly or Constitutional Government. We might notice in this connection that the distinction between despotic and Constitutional Government is not that in one case the people have no power and in the other case have a great deal of power. In both cases the power is in the hands of the people ; but in relation to despotic Government the people's consent is more passive and is expressed by irregular methods, whereas in relation to Constitutional Government the people's

consent is more active and they have regular methods of expressing it.

Whatever particular form the government may take, we see that it must be related to the state as a whole and to the people composing the state. It is for this reason that Woodrow Wilson describes Government as 'the executive organ of society, the organ through which its habit acts, through which its will becomes operated.'

Some other uses of the word 'Government'—When we use the word 'Government' we are often referring not to the general idea of Government but to Government of a particular kind. We may be referring to actual Governments. In this connection we may speak of monarchical Governments, tyrannical Government or Constitutional Government and we may also use the word in the plural and speak of Governments.

There is a still narrower use of the term according to which we use it to describe merely the *executive* portion of the constitution—*i.e*, those who are actively employed in administrative work and in carrying out the commands of the legislature. In this sense the Cabinet Ministers in Britain would be called specifically the Government.

In closely connected sense the word Government is often applied to the party in power, that is, to the party which has a majority in the Parliament; the minority is known as the opposition.

The first duty of Government is (1) positively, to administer the affairs of the country with a view to securing the welfare of the people and (2) negatively, to remedy wrongs inflicted on individual subjects. This includes also the prevention of wrongs.

CHAPTER IV.

§ 1.—Sovereignty of the State.

THE question of sovereignty is up till now a vague one and no precise definition can be given of it.

The word Sovereignty is used in many different senses. It implies in a purely nominal sense the titular supremacy of a king, *e.g.*, king Edward VII was the Sovereign of England—meaning of course that this Sovereignty was merely titular and not legal. He is not the maker of law, nor above the law, nor is he the only effective force in the state. Sovereignty in this sense is formal.

In phrases like Sovereignty of the Parliament we have a legal notion, for Parliament makes laws and is the supreme law-making power. It can make and unmake laws. Whatever it passes has irresistible power and cannot be changed except by Parliament. This legal sovereign is often called sovereign *de jure*, and as it carries irresistible power also to enforce laws, is often called practical sovereign or sovereign *de facto*.

Again, in phrases like 'sovereign people,' or 'Sovereignty of the people' we have a political notion. This Sovereignty is called political Sovereignty. In a modern state the people is said to be sovereign, but that is true in a qualified sense. They cannot legislate, but only vote *i.e.*, express their opinions and elect people who do legislate.

Sovereignty has yet a fourth sense and that is a more general sense. It means *Supremacy* without any legal or political notion. The notion of obedience and the right to claim obedience goes with it. In the Middle Ages the term Sove-

reignty was used freely to denote any power which could give final decision so that a Municipality was sovereign in certain airs. But in modern times the term is limited to denote the nest power in the state It is an original, absolute and united power of the state over its individual subjects.

Having given the four different meanings (*formal or titular, al, political* and in the sense of *supremacy*) of Sovereignty us examine them in detail. Formal sovereignty now-a-s has very little attraction for us. In mediaeval and early dern history formal and legal sovereigns combined in the king who was sovereign both in title and in law. He was in fact absolute, he could make laws and unmake them. But gradually the king's power to legislate dwindled into almost nullity and he was deprived of his legal Sovereignty which came to rest with the law-making body, the king having only a formal recognition which still survives in the phrase 'the king in Parliament' which is really the seat of legal Sovereignty.

To a lawyer the Sovereign authority is the person to whom the law attributes legal force, that is to say, he is the person whom the law declares to be the ultimate authority for issuing laws or commands. Discovery of a sovereign from the legal point of view is usually quite easy. The legal Sovereignty or Sovereignty *de jure need not necessarily* be connected with practical sovereignty. The question who is legal sovereign is quite apart from the question who made him sovereign or why he is sovereign. The practical Sovereign is the person or the body of persons who can make his or their wills prevail whether with the law or against the law. He is the actual Sovereign to whom obedience is actually paid.

Sovereignty *de jure* or legal Sovereign *should* also be Sovereignty *de facto*. In every stable state it is so, and for a state to be perfectly stable it must be so, that is to say, legal right

and practical power must go hand in hand. Right and might must go together. The legal authority is powerful enough to create practical authority.

There need be no confusion between legal and political Sovereignty. We have seen what legal Sovereignty is. What is Political Sovereignty ? The conception of it arises from the *state as an organised whole* with parts subserving the whole. A state must first of all be independent or else the Sovereignty would be outside the state. Secondly, within the state there must be somebody in chief authority whose commands or laws must be obeyed, must be forcibly obeyed if necessary, by the bulk of the population within the state. Without this central fact of **obedience** demanded either rightly or wrongly from the citizens, there can be no state. Where obedience is not present the very essential bond of a political community is absent. The State's command must be obeyed, though force to be used. Sovereignty then implies the fact of obedience and at the same time the right to command. If it is to be real it must be able to have the full power of coercion if necessary. It must control every part of the state. *Political Sovereignty is the resultant* of all the forces within the state ; we may say that it is the state itself and it exists with the state. 'It is really the centre of the focus which exists in the parts. The concentrated essence of national life, majesty and power focus to a point'.

Prof. Dicey, David Ritchie and Prof. Sidgwick and a few other eminent writers not content with the conception of legal sovereignty already described, have started the theory of *Political* Sovereignty. According to them the person or body of persons who are *legally* competent to issue sovereign commands have only legal vested rights for a period ; ultimate political power lies elsewhere. Legal Sovereign authority depends for the exercise of its power either upon the active or

passive consent of the people. Rousseau favoured the doctrine of popular sovereignty. But to consider that the supreme political power belongs to the general mass of the people is to bring anarchy. Some of the advocates of *Political Sovereignty* state that in Democratic countries the ultimate Sovereign power lies with the general mass of voters. But in England Parliament which is only legally sovereign, is competent to 'pass a law declaring its own existence permanent and robbing the voters of their electoral privileges.' Hence plea that the electoral body is the ultimate repository of political power is gone. However critical search we may make for ultimate Sovereignty we cannot grasp it, it remains always vague.

The Modern Theory of Sovereignty—came into existence with the rise of Modern States. The essence of the modern theory is that the sovereignty is the highest supremacy of the state, that it is indivisible and unlimited. France was the first to develop the theory of sovereignty and Bodin was the man first to think of it. He defined state thus —a state is an aggregation of families and their common possessions ruled by a sovereign power and reason; and sovereignty he defined as supreme power over citizens and subjects and restrained by the laws. The chief function of sovereignty is to make laws. But Bodin puts a limit to sovereignty when he says that all are bound by divine law, law of nature and law of reason.

Austin's Theory of Sovereignty—The definition of Law and Sovereignty as laid down by the English Jurist John Austin, runs thus: 'If a determinate human superior not in the habit of obedience to a like superior, receive habitual obedience from the bulk of a given society that determinate superior is sovereign in that society, and that society is a society political and independent.'

It appears from this that sovereignty of the state has two principal aspects : *Internally*, it means absolute authority over all individuals or associations of individuals within the state. It is paramount over all actions within. There can be no political power above it. Its command is law. The Laws passed by it, however wrong and unjust on moral and ethical grounds, can never be illegal. There is no legal limit to the sovereignty of the state. It is the highest legal authority in the state. If there is any power which can legally limit its power of action within the state, it is itself ; for it is the only law-giving authority in that state. *Externally* it means freedom from all control from without. If a state is compelled to recognise the political superiority of another, it loses its sovereignty and becomes subject to the sovereignty of the latter.

Limitations upon Sovereignty :—Some have tried to put a limit upon the sovereignty of the state. Bluntschli, for example, says, a state is limited *internally* by the rights of its individual members. But these rights are the creations of the state itself. The state is the source of all rights and the enforcer of all obligations. "In so far as the individual has claims upon his fellows to a non-interference on their part with the free exercise of certain outward acts, such claims have no legal force except as recognised and enforced by the political power."* Though the state is supreme over all actions within, it *allows* certain amount of individual liberty to certain activities in which it *does not like* to interfere, not that it cannot interfere. Hence individual rights and liberty do not curb the sovereignty of the state, they are the creations of it and exist so long as it allows them.

Bluntschli also says, 'a state is limited *externally* by the rights of other states' ; but this limit is not a legal limit ; it has

* Willoughby, The nature of the state, p. 181.

rather an ethical character. Sovereignty is sometimes said to be limited by the laws of God, of nature, and of reason, which are supreme. Bentham says that the state is limited by its treaties. But it must be remembered that these are not laws in the strict sense of the term Agreements and conventions between states are matters of International Law and are interpreted by the states themselves.

Criticism of Austin's Theory of Sovereignty :—At first sight Austin's theory looks clear and self evident. In a modern organised community the bulk of the people do habitually obey the acts of a superior, for example, in England they obey the acts of Parliament, implicitly obey at the same time the precedents set up by the judges which have received the implicit consent of the Parliament. What we want is a theory of Sovereignty that is universal. We do not want any theory which applies to one particular type of society but to all and this is where Austin's theory breaks down. Austin was a jurist, writer of law and he professed to give a theory suitable to an existing normal state, whereas his theory applies only to two types of modern state—(*a*) those with a legislature omnipotent ; (*b*) those with an omnipotent monarch. England is the example of the first, Russia, the second. In most modern states the legislature are limited by written constitutions. In moslem countries the Sacred Law (Koran) limits the monarch. The main objections to Austin's theory are that it does not apply universally and that it is too formal and abstract. Austin is said to have mistaken the nature of law and failed to indicate the ultimate source of political authority. Sir Henry Maine urges these objections. He says that in the Eastern countries where immemorial customs reign supreme, the sovereignty lies with the Prince or the monarch even though he does not issue a single command which Austin would call a law. The sum and substance of his argument is that sovereignty does not neces-

sarily imply the power of legislation. But this charge can be refuted by saying that what the sovereign permits, he commands. He may not issue direct commands which become laws, he may allow some customs to continue and to recieve his support. Then these customs are as valid laws as his direct commands.

Location of Sovereignty—It is no easy matter to locate the Sovereignty in any given state. On an examination of the point we may give 3 answers: (1) the people, (2) the organ which can amend the constitution (3) the sum total of the law-making bodies in the Government under the State.

Rousseau favoured the doctrine of popular Sovereignty which is very common now-a-days, as it is the outcome of the democratic development. We have an outstanding example of this theory of popular Sovereignty in the French revolution.

In countries where law-making and constitution-making are two different bodies, Sovereignty lies with the latter because in such countries government and the ordinary legislature are limited by the constitution and therefore the body which can amend the constitution is the real Sovereign.

In England Sovereign legal authority lies with the Parliament which comprises the King, Lords and Commons *i. e.*, there is no legal restriction on its power. But in France the supreme legal authority lies with the National Assembly which alone can amend the constitution and pass any law it likes. In Germany, the Sovereignty lies not with the Emperor but with "the union of German federal princes and the free cities." In the United States of America as 'the powers of the States as well as the federal Government are limited in extent Sovereignty lies in neither of them but in the Constitution.' According to others it lies with the body which has the power to amend the constitution.

Sovereignty is sometimes said to be located in the sum of the law-making bodies in the state provided they act according to law. These bodies are divided into (*a*) Legislature—national and local (*b*) Courts (*c*) Executive officials (*d*) Conventions (*e*) Electorate (in the case of referendum). But this theory of the location of Sovereignty in the sum of the law-making bodies of the State has many strong objections to it.

§ 2—individual Liberty.

From the analysis of the conception of Sovereignty given above it *would appear* that Sovereignty of the State and Individual liberty are contradictory terms. For Individual liberty has no place where the legal supremacy and power of the state is unlimited But on a closer examination it will be found that the two conceptions of Sovereignty and Liberty are not antagonistic, rather correlative It is better first of all to clear out the true meaning of Liberty from the different interpretations which it has been used to convey. (1) It means *National independence*. When a nation is not under the domination of another state it is better to use the phrase 'National Liberty' or 'Independence' to indicate this sort of freedom from foreign interference. (2) It means, besides this national autonomy. Political or Constitutional Liberty. A people is said to be politically free when they live under a government which is responsible to the general body of people, and not under a tyrannical government. If the people have no control over the government they have no constitutional liberty even if the government be mild and humane. In England the people have this kind of liberty as the government is responsible to the Parliament which represent the people. (3) It means **Civil liberty** which means freedom from state-

interference. It is with Civil liberty alone that we are at present concerned. The true formulation of Civil liberty has been put forward by Herbert Spencer. Rousseau's 'Natural Liberty' leads to anarchy for according to him, every man has unlimited right to the same thing. Herbert Spencer states, "Every man is free to do that which he wills, *provided* he infringes not the equal freedom of any other man." Now this freedom from state interference is only possible with the assistance of state interference. Am I free to enjoy my property without the existence of the state? Clearly not. For if any body interferes with my 'rights' it is to the state that I turn and with its assistance I am free to exercise my own rights. Hence it is seen that individual *liberty*, as thus formulated, instead of being contradictory to the idea of the co-ercive power of the state, *is primarily dependent upon the existence of authority*. No state, no liberty. The state is the guarantee of rights and its laws are the real defences of the liberty of the individual. A state without sovereignty is no state at all. Where there is no sovereignty there is anarchy and anarchy is not freedom but license. The sovereignty of the state is a guarantee against license *i.e.*, an authority or power is necessary to enforce the rights of all and to curb the license of some. The state alone enforces obligation. The state sustains and adjusts rights. Green puts it thus—"The state is the reconciler and sustainer of the rights that arise out of the social relation of men." The obligation referred to has a double aspect—the individual looks to the state to guarantee him the rights and the state looks to the individual to fulfil its laws *i.e.*, the state obliges every body to guarantee rights of others. Both are really one—Liberty is not inconsistent with the exercise of force. There seems to be an antithesis in saying that to be free we must have law and that there must be restraint if there is to be freedom.

Whether the state should do more than merely protect the rights of the individuals is an important question which will be discussed in the Chapter on State Interference.

John Stuart Mill takes Liberty to mean 'being left to one's self.' He says all restraint is an evil. This extreme individualism of Mill shows only the negative aspect of liberty which is quite useless. *Liberty is conditioned by law.* It means the Sovereignty of law and not the Sovereignty of the individual for the Sovereignty of the individual is really anarchy. Speaking of freedom Locke says—Freedom is not a liberty for every one to do what he likes, to live as he pleases, and not to be tied by any laws ; but freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it.

Mill's conception of individuality is that it can be best fostered by an absence of law. He seems to forget that it can be cultivated only in society, that it grows not singly and alone but among other individualities helping them and being helped by them. The state by its laws adjusts and sustains the various relations between men. The main functions of laws are to define right of individuals as against other individuals. Hence in the absence of law there is no place for individuality as Mill thinks.

The growth and rise of individuality is a recent fact of History. In ancient states the individual was nobody except as a member of the state. He had no separate existence apart from the state. The state was sovereign politically, socially, and religiously. It interfered in every-day life of the individual. But several influences, the chief among them being the Roman Law, Christianity, and the Renaissance movement, helped to make the individual important as far as State-interference was concerned. The progress of individual liberty has

been marked by a falling off of such interference. Governmental authority has been limited and full scope has been given for the individual to realise his own ends and to utilise his capacities for the benefit of his Society. But all this while the state remains the sovereign power. It interferes occasionally on grave and important matters. *It is thus under the all powerful controlling authority of the state that Civil liberty can be best enjoyed but not otherwise.*

CHAPTER V.

1.—The People—the State—the Nation.

PEOPLE and Nation—There is a distinction between a people and a nation. A nation is a *political idea* realised in a concrete form, but a people has no political implication. A people is rather related to *civilisation* than to politics. There may be a people which is not a nation but there cannot be a nation which is not a people. The natural development of a people is to form itself into a nation. A *people* may be defined as a union of a number of persons of different occupations and social strata in a society having a common spirit and feeling, bound together by language and customs, in a common civilization which gives them a sense of unity and distinction from all foreigners. A people may not have any political organisation, but a nation must have that political organisation. A *nation* is a *society of persons* who are members of a state and are united and organised in the state. A nation is a collective personality, legal and political. National will and national spirit are realities and not mere fictions of language. They are not merely the sumtotal of all the individuals composing the nation. Nations may be reckoned as organic beings. The difference between a nation and a people may be put thus : a nation possesses all the unity of a people (*e.g.*, unity arising from common language, religion *etc*) and in addition, the unity of political organisation.

State and Nation—There are several points of difference between a *State* and a *Nation*. The word Nation is more con-

nected with people than the word State. The word State may denote an artificial political organisation which has little respect for the question whether the members of it belong to one people or serveral peoples. A nation on the other hand, is usually composed of one people only. In a *State* the tie which binds the members together is political, that is to say, their sense of corporate unity comes from common obedience to the same government. In a *nation*, the tie arises from community of blood or language or religion or historical tradition, or some or all of these. It is not of itself political, but it almost invariably tends to become political. Other things being equal, a nation-state is stronger and happier than a state which is not a nation. Other points of difference are :—(1) A nation is not quite so dependent on territory as is a state. It is to be noticed, however, that this independence is only temporary. A nation which loses its territory cannot long continue to exist. (2) While it is for the most part true that every nation is, in the strict sense of the term, a state, it does *not follow that all states are nations*. The term nation, is to be 'thought of as having a racial or ethnographical significance.' In general, of course, the idea would be that the state should be co-extensive with the nation but very often a state may include several different peoples who have not reached the state of development which would entitle them to be called nations. They have not obtained full political rights and therefore they entered into a larger political combination which does not correspond to their natural characteristics as a people and which, therefore, cannot be called their nation but only the state to which they belong.

When, however, we find that the natural unity of language, religion and custom and common descent *etc.*, is lost or does not pervade all the peoples composing a state, it is better to avoid using the word nation in describing the state.

§ 2. Rights of nationalities.

'Nationality denotes a population having common bonds of race, language, religion, tradition and history. These influence create the consciousness of unity that binds individuals to a nationality. Such a population tends to form a state."*

The rights which a people may claim to assert may be stated as follows :—

(1) One language and literature.
(2) One custom.
(3) Legal Institutions.
(4) Moral and intellectual life.

For (1).—This was not recognised by the Romans as a right of conquered provinces. They suppressed the native languages. The selection of a language for state purposes which may be different from the language of the people does not abolish the native language but if native language be forbidden to be taught in schools, there is at once an interference with the right of a nationality to have its own language.

For (2)—This right may be stretched to include a wrong custom and in that case the Government must interfere to the extent of stopping a national custom *e. g.*, Sati. But such a check should only be imposed in the direction of a higher law.

For (3)—Legal Institutions—Sometimes a conquered people has a good system of legal institutions but more often it has not. In the latter case the conqueror is bound to introduce the higher law. This is what the Romans did in all their conquered provinces, and in their case it was justifiable, because Roman law was superior to every provincial code. In

* Gettell, Introduction to Political Philosophy.

the history of civilization Roman law takes a very high place for its justice value. The principle was not to abolish native laws, because they were native laws, but to introduce Roman law because it was scientifically superior. Yet there are limits to the introduction of the higher law even though it is admittedly superior *viz.*, in the case of the unwillingness of the people to receive it, *e. g.* Germanic tribes would not receive Roman law because they preferred their own law and were strong enough to maintain their preference. The attempt of the Romans to force law upon Germany ultimately lost Germany to the Empire.

For (4)—Nothing to be said

The Function of Nationality in States—Nationality has existed for centuries in Europe but only recently has it been recognised as a principle in political theory. It may be said that the ancient Greeks developed nationality in fighting the Persians, but it was not the nationality of modern history. The fear of the common danger made the Greek City States sink their mutual jealousy in order to take common action against their foe, but as soon as the danger passed these states fell back into their former condition of mutual antagonism. Rousseau did not hold the theory of Nationality, for he traced the foundation of the state through society and not through the nation. The French Constitution adopted the same principle and used the word 'people' rather than 'nation'. It was not till the 19th century that the national consent began to rule in Europe. Napoleon's career may be described as an attack upon the principle of nationality in favour of a great continental or international empire, with himself as head and France as centre.

Bluntschli says the English distrust nationality as a political principle, for there are several nationalities in the British Empire. This remark does not apply to England or to the

self-governing colonies where there are several nationalities nor even to Protectorates *e.g.*, in Africa where national movements whenever they develop strength and organic life are fostered by the protecting Government.

In Europe the German sense of nationality was practically lost owing to the numerous kingdoms and provinces into which Germany was divided, but since 1870 German nationality has manifestly formed itself. There is now no doubt about it. The unit now is the German Empire and not a separate kingdom or province. In France nationality was not secured by the French Revolution but only by the second Revolution of 1848. In Austria there are at least three great nationalities *e.g.*, the Germans in Austria, the Hungarians and the Bohemians. Austria to this day has not developed its nationality but has to be content with three separate nationalities and has to try to reconcile their separate ambitions in one common policy. A people is not a political society but any people may become a political society by adopting political institutions. These usually grow up gradually. Thus we may say that the consent of people receives the consent of state. Sometimes the people and the state are co-terminous *i.e.*, they exactly coincide, but sometimes the state is smaller than the people. In that case there are two tendencies :—

(1) The people forms a new and distinct state *e.g.*, Athenians and Spartans in ancient times and United States in modern times

(2) The other tendency is the combination with the same nationality in other states *e.g.* United, Italy.

But if the limits of the State are wider than one people ,one of the three results will follow :—(*a*) Absorption *e.g.*, Poles and the Russians (*b*) Separation *e.g* , Lombardy and Venice. Venice and Lombardy have separated from Austria with which they were united as a state though they were united with Italy as a

people. When the unification of Italy took place the Venetians and the Lombards joined in State-relations with those with whom they were connected as a people (*c*) The union of two or more different peoples into one state by good government or by force *e.g.*, Great Britain.

Nation and Society—Nation is an organism with a legal personality endowed with unity of will and it is a political idea. Society is a casual association of inorganised individuals with no collective personality and no collective will or legislative power but only a public opinion. The state is more judicious than society and has to consider other states whereas society considers only its own development.

Society and people—The people has a history, a common spirit and usually a common language in it, has a natural organisation physically, whereas society is a shifting mass of individuals and is merely a sum of individuals. Further a people may, as we have seen, be divided over several states, but a society is usually confined to one state. Even if society is used in a wide sense, *e.g.*, in the phrase European Society, it does not correspond to the boundaries of peoples.

§ 3.—Political Society.

We may speak of a State or Nation as a political society, especially when we are thinking of the classification and division of the people who compose the society. From a political point of view, of course, the first division that we would make, is into the classes of rulers, and ruled. But in this connection we wish to go further back than the purely political point of view, and ask what is the actual classification of the people of a state to which the Government of the state must adapt itself. A study of these classes, then, becomes of the utmost importance if we are to understand the conditions under which different forms of constitution become possible.

It may be pointed out that by the Socialists the very existence of different classes is considered blameworthy. Aristotle on the other hand, points out that the differences and reciprocities of the various classes are essential to the unity and strength of the state.

It may be said that Government in modern times are more independent of class or caste distinction than they used to be. We must, however, enquire what is meant by this. If it means that privileged classes or caste have not so much power as they used to have, this is true. But the statement may simply express or describe the transference of power from the privileged classes to other classes; so that the political power would correspond to distinction of class.

ITS DIVISIONS.

PRIVILEGED CLASSES.

In Europe Privileged classes are variously divided but include the following groups : clergy, nobility, freeman. The unprivileged class consists of Slaves or dependents. In India the privileged classes were the three upper castes and the unprivileged class was the caste of Sudra. Caste and class are radically distinct. Caste is a hereditary system sanctioned by religion for the purpose of stereotyping social distinction. Classes are an institution of the state. Classes do not interfere with the growth of the state for they may change from time to time whereas castes are rigid and inflexible.

The classes in mediaeval Europe included the Clergy who lived under canon law, the Princes or upper nobles who lived under the law of nobles, the Knights who lived under feudal law, and retainers, by their own law ; in addition to these, citizens who lived by the laws of their city and lastly, the

peasants who lived by manorial customs. These may be put into four classes—Clergy, Nobles, Citizens and Peasants.

I. Clergy :—In the middle ages the clergy were an ecclesiastical order by themselves. They did not accept the jurisdiction of the state. They were free from military service and from taxation. They were under canon law and as such were distinctly anti-national. In whatever country they were, they considered themselves under the law of the Pope rather than under the law of their king. In this way they were regarded as enemies of the state.

In Italy the Pope had a distinct sovereignty and a state in which he was politically as well as ecclesiastically supreme. In Germany the clerks occupied high positions. In the old German Empire three out of seven electors were ecclesiastical Princes *viz.*, the Archbishops of *Mainz*, *Koln* and *Trier*. Thus the Clergy had almost princely power Many other Archbishops had territorial rights. Their supremacy was not hereditary, but professional. From the time of the German Reformation in the 16th century the temporal power of the church-princes in Germany was curtailed and it perished in the beginning of the eighteenth century.

II. Nobility—

(a) French Nobility :—The beginning of the French nobility shows it to have been the reward of personal service. In the Carlovingian period (752—987) the Mayors of the Palace were at the head of the military nobility. But in modern France the nobles were feudal lords. In the period of the Capets which covers from 987—1226, French nobles became independent. Former vassals became independent lords. A distinction was introduced between the higher nobility and the lower. To the higher belonged Dukes, Counts, Viscounts, and the Barons. They possessed 'the high justice.' The tenants on their lands were subjects. The lower nobility consisted of Knights and

Courtiers. They were inferior to the nobles. They had the 'law justice' or limited jurisdiction. In course of time, the lower nobility became feudalised and many of them were ennobled by the king.

In the period from 1226—to the French Revolution the kings were really forced to fight the nobles and it was not till the reign of Louis XI (1461—1483) that the contest ended in favour of the king. Hereafter the nobles became governors and no longer had territorial sovereignty. Louis XII completed their subjugation by making them dance attendance at his court. The French Revolution destroyed the whole of the old nobility. Napoleon instituted a new nobility (1) of merit, the Legion of Honour and (2) a hereditary nobility which was never completed. In France the Revolution of 1830 abolished the hereditary peerage, and the Revolution of 1848 abolished personal peerage but the old titles have been allowed to remain. So the nobility is a titular nobility with no power.

(*b*) *English Nobility.*—The English nobility is the oldest surviving in Europe. It began in the Saxon days before the Norman conquest. Under the Norman system the king maintained his supremacy by making the feudal lords hold their fiefs direct from the king. Thus the Anglo-Norman nobility never attained to sovereign power. But the political rights of the nobility were very great *e.g.*, in the Great Council or in Parliament at first these nobles were little more than ornamental but in the 12th century they attained power and the Magna Charta enacted that bishops and abbots should be summoned to Parliament. In England there has always been a distinction between Lords Temporal and lords Spiritual. At the end of the 13th century these lords became an Upper House of Parliament. Under the Earl of Leicester the nobility seemed to overawe the king but ultimately the royal prerogative was resumed. The nobility proper did not include

knights but knights became very important and the representatives of the community in Parliament were chosen from amongst them. The English nobility has always been a strong corporation with the national duty of usually reducing royal prerogative and asserting the freedom of the nation. Undoubtedly the freedom of England owes a great deal to the nobility. The English noble families have only one nobleman each ; the others are commons. In later times they became a defence of the throne against the democracy. In England a peer is not bound to marry into a noble family and conversely commoners became peers from time to time. Hardly a year passes but some distinguished commoners are made peers.

(c) German nobility :—(1) princes and (2) knights.

There is a great distinction between the two classes of German nobility—Princes and Knights. Only those belonged to the Princely families who held a countship in fief from the king ; only the heads of these families were lords. The Prince in this sense was not a member of the royal house but of the highest rank of the nobility and the title extended to ecclesiastical as well as to civil personages. In the old German Empire the nobility had two rights :—(i) a right of territorial sovereignty, (ii) a seat in the imperial Reichstag. The German nobility developed independent territorial power and reduced the power of the Empire. But they had great family pride and their wives had to be of equal birth with themselves. But gradually the ecclesiastical principalities vanished and many independent princes and lords were mediatised and by 1815 the German Confederation settled the princely families by proclamation

The knights formed the lower nobility. They were composed of the *(a)* vassals of the nobility *(b)* knights without fees (*c*) retainers *i. e* , persons of humbler ranks who were raised to knighthood for their distinguished services in the field and

(*d*) members of noble families in cities. The lower nobility maintained the hereditary principle as well as the higher, but it had no territorial sovereignty ; and their descendants are now merged in the higher class of citizens.

III. Citizenship—The word Citizen may be used in two senses. It may denote *all who participate in the powers and privileges of the state, i.e.*, those who may be counted members or parts of the State. This was the usage of the term which the French Revolutionists favoured, and as a technical and legal term it is probably the correct use of the word. On the other hand, the term 'Citizen' has often been used to denote simply the Third Estate or Class. In this sense it would exclude the clergy and the nobility.

Aristotle seems to favour the first usage of the term. He defines a Citizen as one who has the right to act as a member of the public assembly or of the courts of law. Citizenship did not depend upon residence within the territory of the state. Aliens were excluded from Citizenship, and also all who took part in manual work of any kind Aristotle's democracy was ostensibly ruled by all, *i.e*, ruled by the Citizens as a whole. We see however, great differences between the ancient and modern democracy. In modern state almost the whole population may be reckoned as citizens. In the Greek state there was a large slave and artisan population below the rank of Citizens.

In considering the development of the Citizen class during the middle Ages, we may distinguish between the *Country* and the *Town*. In the Country the privileged classes had it all their own way, and the Citizen Class received very little attention. In France those Citizens who had originally owned land degenerated into the position of servile and landless peasants. It was in the towns that the idea of Citizenship first became prevalent. The towns contained great mixture of people from

princes down to freemen without land and even to serfs. This natural mixture of Classes tended to break down Class distinction. The right to Citizenship now depended very little upon good birth or upon the possession of land Citizenship became professional, or depended upon a man's occupation. The artisan class obtained civic rights and obtained great power by means of their trade-guilds. Citizenship was extended further down still. Anything like or servitude or serfdom was abolished in the towns. All were regarded as equal before the law. There was a popular saying that *the air of a town makes a man free.*

It was really from the towns that the conception of democratic citizenship spread to the state as a whole. Many of the town formed leagues with one another which gave them really the position of states. In England, Germany and France the citizens of the towns were represented in the legislative assemblies. Gradually the same privileges as were accorded to the Citizens of the town were given also to the country people.

IV. The peasants and Slaves (Classes without Political rights) *(a)* Peasants were really serfs till after the 16th century. Those who left land, ran away and escaped to the towns, became freemen if not claimed by their former lords. The method of liberating serfs from Church lands spread from Church land to royal domains. But the peasants thus liberated while acquiring private rights had no political rights. In England after the Black Death on account of the scarcity of population the serf population became free and received rights in private law but not political rights. In Germany Peasant War of the 16th century was an attempt of the German peasants to throw off the yoke of their lords. The attempt failed. In Prussia in 1702 serfdom was abolished on the royal dominion. After the French Revolution any states where serfdom still survived, abolished the custom. Ir Russia serfdom continued till the sixties (of the last century.)

(*b*) **Slavery** :—Slavery is distinguished from serfdom chiefly in degree. The serf was usually a peasant in the country, the slave was usually an artisan in the town. The majority of the citizens of ancient Rome and Athens were slaves. Slaves were either captives taken in war or criminals punished by loss of liberty or the children of such classes. A slave had no right. He was regarded as a *thing*, rather than a *man*. Aristotle traces slavery to nature and considers some men are slaves by nature. [His 'Politics' is based upon the assumption of this theory. According to him there must be a class of people in every state which will work for the free citizens of that state and leave them sufficient leisure to mind to the political affairs of the state]. But this argument, if valid at all, only proves that some men have to serve.

The Romans regarded slaves as their property and denied them all rights, even rights of marriage and kinship. In Europe except in Russia slavery was gradually eliminated by the growing conviction of intellectual freedom in men. Emancipation of slaves and serfs is usually traced to Christianity but this must not be taken to mean that slavery was denounced in the Christian Scriptures. On the contrary, it was only the gradual elevation of the masses under Christian influence and education that spread the ideas of liberty of men and it was not until the 19th century that the Christian Church in a formal way denounced the institution of slavery.

Negro-slavery :—Negro-Slavery in America is a phenomenon by itself. There the white planters unable to work in the cotton fields of what are now the sovereign states of N. America had to fall back upon Negro labourers. These labourers were imported from the west coast of Africa not only to the South states but also to the West Indian Islands, and their work brought in wealth to their white masters but none to themselves. The Negro-Slave had more privileges than the

ancient Roman slave. Within limits he was allowed to marry and to enjoy home life but his condition depended very much on the whim of his master, and he had no rights of his own. The emancipation of Negro Slaves by England was due to the labours of Wilberforce and his comrades and was completed in 1833 for British dominions. The Government of Great Britain authorised the payment of 20 millions sterling for the emancipation of slaves within its dominions.

In N. America slaves were not emancipated till 1865 and only after a bloody war had given a victory to the Northern states. In Brazil, slavery was abolished in 1871. No modern state can tolerate slavery as it is against the fundamental conception of the liberty of the subjects. Slavery siill continues in uncivilized countries but the spread of European Protectorates over Africa, the home of the Slave, has largely reduced the institutions of Slavery and threatens its very existence.

Modern Classes :—In modern States privileged classes tend more and more to lose their privileges. Thus at the upper end of the Social State there is restriction of privilege and at the lower end there is extension of rights. These two processes have largely reduced inequalities among the members of a state and a greater degree of political equality has been reached in the *latter* part of the 19th century than ever before. Still there are privileged classes even in a modern state, *e.g.*, in England the old classes of nobility and the gentry still survive. Their ranks are constantly being added to by rich and distinguished men from the middle classes who have gained prominence or distinction in industrial or professional abilities. Thus the old classes are constantly being modified and as the nobility has no difficulty in intermarrying with the wealthy middle class the ideals of the old nobility are being expanded. The English nobility is thus more civic than that of any other

European country. Another division of great importance is the middle class which covers everyone from the noble down to the artizan. The upper middle classes are wealthy and cultured, the lower middle classes have a competence and much energy. They are constantly sending up members to the upper middle class and even to the aristocracy. What are called the lower classes are composed chiefly of artizans, agricultural labourers *etc.* In England, these also have votes so that they are an a political equality with the nobility and as they are vastly superior in number to both the middle and the upper classes. their political power is immense. In America there are technically no classes as there are no titles and no nobles. But in England there is a considerable distinction between different social classes and this prevails throughout Europe except in France where the Republic which has now subsisted for 43 years, has destroyed the old distinction of French ranks. Probably Germany and Austria draw the line most rigidly between the nobility and the upper classes.

From these above standpoints the State citizens may be divided into four groups :

(*a*) The Governing class.
(*b*) The Aristocratic class.
(*c*) The Third Estate.
(*d*) The people or the Fourth Estate.

(*a*) The governing class may be, as in England, partly aristocratic, partly democratic or as in Germany, chiefly democratic. But nowhere it is now entirely aristocratic. The governing class includes at its widest all persons doing Government-work from the Prince down to the humblest clerk or menial in the Government service. Thus it includes members even of the Fourth Estate. In England the head of the governing class at present is the Prime Minister and not the sovereign.

(*b*) The aristocratic class which jealously cut itself off from the other classes, is now everywhere brought nearer to an equality with them and members of aristocratic families have to work like ordinary citizens at employment which had previously been beneath the dignity of aristocracy. In Germany the noble families have still to marry members of noble families but in other directions the alliance with the middle class is complete.

(*c*) The Third Estate covers the middle classes which includes professional men, merchants, clerks, *etc.* This is the class that has most influence in the modern states both on account of its intellectual and financial prominences.

(*d*) The Fourth Estate has less influence though it has the mass of political power. In other European countries than England the mass of the artizans have no political rights but they are considered as the proletariat. In the United States the artizans have more power than in England and in Australia ; they control the legislation of the country. It is considered that the test of political power is the right to vote for members of the Legislature. This really puts the power of the country into the hands of the voters and if as in England, America and Australia, the artizans form a large section of the voters, their power in the state becomes very considerable.

CHAPTER VI.

§ 1.—Rights and Duties.

A MAN'S rights have been defined as those things which for the sake of general good, it is convenient that he is allowed to possess. A right is the other side of an obligation or a duty. Sidgwick says (p. 32)—a right is really an obligation regarded from a different point of view *i.e.*, regarded in relation to the person to whom the obligation is intended to be useful. If a man has a right, other people are expected to respect this right; they come under certain obligations to him. He must also respect the rights of other people. Thus we may say that 'every right implies two parties—the person who makes a claim and the person or a body of persons against whom it is made.'

From the above definition we see that the conception of rights obtains its full meaning only within a settled society. Outside the society a man's rights would rest only on the amount of force he had at his disposal. They would not be secured by any corresponding obligation on the part of his fellow-citizens. In other words, the conception of rights would be swallowed up in that of might.

We may distinguish between a man's right in connection with the state and his rights in relation to other individuals. We may call the first, *Constitutional rights* (stated and defined in Constitutional Law, Administrative Law, Criminal Law *etc.*, which are divisions of Public Law) and the second, *Civil rights*. A Government owes certain duties to the citizens and the citizens owe certain duties to the Government. The citizens have certain rights over against the state, such as, right to

freedom, to protection, to the impartial administration of the law *etc*, provided they have fulfilled their duties towards the state, such as, obedience to laws and judicial decisions, due observance of all regulations meant for the good of the society.

In the narrower sense of the term, constitutional rights mean that a man has a right to a certain share in the Government of the state. It is to be noticed that there is no hard and fast line of separation between constitutional and civil rights. In fact, we may say that the securing of civil rights in general, is also a constitutional right because it is to the state that a man must look for such security.

We may distinguish between *primary or antecedent* and *secondary* or *remedial rights*. A primary right is, as its name implies, an original right. A secondary right is one which comes into existence only when a primary right has been violated *e. g.*, a man has a primary right to his property, he has a secondary right to compensation (through the intervention of the state) when that property has been stolen or damaged.

A—Primary Civil rights are :—Right to life—No one has the right to take away the life of another man. In very special cases when continuance of a life might be a danger to the state, the state may have a right to make away the life. So we may say that the right to life is a primary right but occasionally in certain extreme cases a man may forfeit this right because of his infringement of similar rights of other people. In such a case his primary right may be cancelled by the operation of the secondary right of reparation belonging to the state as a whole. In civilised countries it is never the right of an individual to take the life of another except under a very urgent necessity of self-defence. If there is even the slightest possibility of his defending his life in any other way he has no excuse for taking the life of another.

2—Right to liberty—No one has a right to reduce another man to the position of a mere *thing* which can be bought and sold. Slavery is a violation of natural right. We are not to think, however, that it follows from this that freedom and law are incompatible with one another.

We may in this connection distinguish between *constitutional* and *civil freedom*. Constitutional freedom means liberty to take part in the Government of the state. Civil freedom means freedom from interference on the part of Government. It is obvious that great constitutional freedom might go along with very little civil freedom in a socialistic state *e.g.*, there would be great constitutional freedom but very little civil freedom *i.e.*, the state would interfere with almost all details of individual life.

3—Right of property—It includes (*a*) right of exclusive use. The principle underlying this is that labour expended in getting or keeping the property constitutes a title to sole use. If this were not safeguarded there will be no stimulus to production ; (*b*) right to sell or exchange the property and also to bequeath to others the property.

4—Right to Reputation—'A man has a right, as against the world, to his good name ; that is to say, he has a right that the respect which others feel for him shall not be diminished.' (Holland).

5—Right to advantages open to the community generally—Such as the free exercise of one's own calling.

6—Right to the society and control of one's family and dependents—Such as the control of the father over his children, of the master over his servant *etc.*

7—Right to fulfilment of contracts really entered into—We have a right to demand that other people shall keep the contracts which they have entered into with us. There are however, certain limitations to this principle. Only those

contracts which had been made by adults, which had not been laid up to by deceit or compulsion, and which are not contrary to the welfare of the State, can be enforced.

B. Secondary or Remedial rights—Whenever any one of the primary rights is violated, the right of reparation is claimed by the possessor of the right against the person who has violated that right. The State intervenes and grants reparation.

It is sometimes asked whether a Government should not do more than merely secure its citizens in the possession of such things as it is expedient they should have. Should not a Government compel its subjects to use their possessions for the common good *i.e.*, compel them to realise that their rights involve also an obligation on them to act for the common good. This question introduces the difference between the Individualistic and the Socialistic ideal of Government. We shall discuss these in connection with State interference.

§ 2.—History of Natural Law.

Natural law or the law nature is the phrase indicating *a general principle of actions* founded upon *primitive instincts and beliefs* rather than upon *positive law*. The phrase Law of Nature is very flexible and has worn at different times different meanings. Natural Law was first of all, taken to be synonymous with Divine law as both were distinct from human law. The Greek Philosophers had various methods of de fining it. Socrates made Natural Law antagonistic to Positive Law. Plato speaks of Divine law as the ideal of all human Law. Aristotle is the first to use the phrase 'Law of Nature' in technical term, which he identifies with the Divine law as distinguished from positive or human law. Epicurus used the phrase 'Law of Nature' to mean mutual utility. The Stoics

considered the 'Law of Nature' as the common universal divine rule which governs creatures who are combined into a natural association. They regarded it as the harmony of human justice with the law of the world. Cicero imported into the stoic view of the Law of Nature the principle of Equity. Such a Law of Nature he held to be of universal authority, deduced from the nature of things and therefore simple and easily applied. The jurists of the later Roman Empire transferred the authority of the *jus Gentium* to the Law of Nature regarded as universal. In Roman Law, the Law of Nature was both the model, the ideal and the source of positive law.

In Christian thought the Law of Nature was instinctive knowledge of right and wrong. Later, the 'Law of Nature' was identified with the principles of simple human natures and therefore very imperfect. Later still, the Law of Nature came to be regarded as consonant with human reason and hence as the law of reason itself. Rousseau and his contemporaries regarded 'Law of Nature' as residing in mankind before even society was formed and as giving rise to international relations (Rousseau translated the word, Equity,—which meant justice according to the Romans,—as meaning equality). Kant held similar views but the postulate of a historical State of Nature (to which the Law of Nature belonged) is now dismissed as untenable.

In modern thinking the Law of Nature has a valid meaning. It is a summary of those laws which taking into account all the factors of human activity may be reckoned as the conditions of human life in society.

The English jurist Blackstone (1723—1780) declared that the Law of Nature is higher than any other Law and hence he derived men's natural rights from it. Bentham describes Blackstone as confusing Law-as-it-is with Law-as-it-ought-to-be. Locke in his second treatise on *Civil Government*,

published 1690, argues that Civil Government results from a compact by which mankind which was, to begin with, free, equal and independent passes from a State of Nature into the Civil or Political State. This *State of Nature* has a *Law of Nature* to govern it. By the Law of Nature man already possesses rights of person and property and it is for the better securing of these natural rights that Government is instituted. Locke derived his idea of the law of nature from Grotius (1583-1645) a Dutch philosopher and economist. He really naturalised the phrase Law of Nature in Europe. He conceived the Law of Nature as greater and more original than any other form of law. He imagined a primitive state in which all things were common and at that state the prevailing law was Natural Law. But after the first stage was over he imagines that society departed from primitive simplicity and that private property became necessary. Natural Law led to the divison of property amongst all individuals of a group but Grotius admits that the Law of Nature had been superseded in civilised society by positive Law and that property is now held by occupation under positive Law.

The assumption of Natural Law depends upon a further assumption *e. g.*, natural rights. Have men natural rights or are their rights acquired by Law and by the traditions of society ? The Older School of thinkers on politics proceeding on purely deductive principle asserted that the primitive State in which men coming together in society held all things in common and derived their rights purely from equal sharing in the gifts of nature. But the modern school of Sociology fails to find any evidence of such a State of Law and rather places men's rights upon the bases of tribal rights won by conquest of other rights and maintained by superior force. In the tribe the chief assisted by the council of elders decided upon the rights of the members. When society was in the

nomadic stage it was comparatively easy to distinguish between rights of men, as the accumulation of property was discouraged in those days ; tribal property was easily legislated for.

Practical consequences of a belief in the Natural Law—In condition, where Natural Law prevails there is an absence of positive law and we must go back to the primitive and uncivilised time in order to find the state of society where natural law prevailed. It is not found in any known system of Government in historical times ; consequently a discussion of natural law is more or less academic. But if we imagine a state in which it prevailed we find that the fundamental principle of that society is contained in the proverb 'might is right.' Even in primitive society men had not equal rights because natural right meant in some cases supremacy (*e.g.*, the chief), in other cases obedience (*e.g.*, tribesmen). If we assume that there is such a thing as natural right the inference from that supposed possession would be that men possessed certain possession or properties, not because they have procured them by law or contract but because they were by the Law of Nature entitled to them. The Law of Nature even when accepted would require construction in cases of disputed claims. As long as every one acquiesced in A's claim to possession by natural law there would be no trouble ; but whenever a discontented person disputed A's claim there would arise a discussion as to his rights ;—ultimately this discussion would have to be settled by force. This is the great disadvantage of Natural Law that it has to be settled by force in cases of dispute. In civilised states such disputes are constantly arising and are settled by positive Law. Another disadvantage is its entire arbitrariness. Each tribe or each man might come to have a separate interpretation of Natural Law, and there would be no tribunal to decide which was the right interpretation. Again recourse would be had to force.

Holland gives the following practical conclusions which have been drawn from the doctrine of Natural Law :—(*a*) Acts prohibited by positive Law but not by the so-called Natural Law, are said to be 'Mala Prohibita' *i.e.*, evil because of prohibition. (*b*) Positive Laws have been said to be invalid when they contradict the Law of Nature and hence. Blackstone says : 'The Law of Nature being dictated by God himself is, of course, superior in obligation to any other. No Human Laws are of any validity if contrary to this.' (*c*) Natural Law, or natural equity, has been often called to justify a departure from the sriet rules of positive law, an instance of this is found in the French Revolution,—Rousseau's Liberty, Equality Fraternity. (*d*) In cases where the law makes no provision the courts are sometimes expressly authorised to decide in accordance with the principles of Natural Law. (*e*) The Law of Nature is the foundation, or rather the scaffolding on which the modern science of International Law was built up by Gentili and Grotius.

CHAPTER VII.

§ 1—The Territory of the State.

WE have seen that territory is an essential element in the conception of the State. As Sidgwick says it seems essential to the modern conception of a State that its Government should exercise supreme dominion over a *particular* portion of the earth's surface.

When we enquire how the Territory of a State is settled we get two answers :—(*a*) conquest (*b*) discovery. The Norman conquest meant that the Battle of Hastings had put the supremacy over the Territory of Saxon England into the hands of the Normans. The Territory of England became William's by conquest. Discovery gives the discovering nation the right to the territory discovered,

Whether by conquest or by discovery a territory once gained becomes the area of the Government of the nation holding it. It follows that the territory is guarded and protected by the nation as its property and the invasions of foreign force are beaten back. The interests of the subjects have then to be considered and provided for. Even in a central State this means security of property, maintenance of Law and order. In a more complex society it may imply, in addition, intellectual and social development of the people so as to bring the society up to the maximum of civilised comfort.

The size of the territory is unimportant. In ancient times it was exceedingly small. The Greek states were mainly city-states. In modern times the tendency is towards the formation of larger states. Small states find it difficult to maintain their dignity, and they are always at the mercy of their stronger

neighbours. The growth of states may, as we have seen, take place on account of the growth of the population, or imperial ambition may lead to desire for expansion on the part of the people of a state. Again, the danger of absorption by a more powerful neighbour may lead to an alliance between several small states. It is to be noticed that in modern times improved means of communication make possible the efficient working of a large state or empire.

The disadvantages of a small state have been already indicated. In regard to the upper limit of the size of a state it may be said that a state should never be so large as to be out of reach of the central authority. By a certain amount of devolution of Government however, and by the diligent use of improved means of communication, a very large state may be in modern times efficiently managed.

The strength of the state is not exactly proportional to the size of the territory. A great extent of territory may be a source of weakness rather than of strength. It makes it difficult for the state to act as a whole On the other hand, though a large state may be easily attacked it cannot be easily vanquished.

Thus we see that the size of the state *is limited by considerations of efficiency and safety*. There is no logical limit to the size of the state *i.e.*, there is no reason in the nature of things why a state should not cover the whole earth.

The relation of the sovereign to the territory of the State is not to be compared in modern times to the relation of a private owner to his property. In ancient Israel and in Egypt as well as in some of the mediaeval states the sovereign was regarded as the sole owner of the soil. In modern times the sovereign has only *rule or dominion* over the territory. He is not the owner of it. This rule of the sovereign over its territory is, however, of a fairly complete character. He may enforce his

laws in every part of the territory. A man cannot say that he is beyond the reach of law just because he lives in one place rather than in another. Also the sovereign has power to prevent the intrusion of any other power into his territory. He may also forbid the sale or alienation of any part of the territory to another power. He may insist that any such interference or alienation should take place only by definite agreement.

§ 2—Its Political divisions.

The Political divisions of a country will depend largely on its size. In countries which have expanded to a considerable extent we may always distinguish between *home country and the colonies*. The colonies again, may be divided into crown colonies and self-governing colonies. Further, within a large state we must have divisions of various kinds. A *Federal State* will, of course, be divided, first of all, into the countries which make up the Federation. Within *a single large country*, again, there will always be a considerable number of sub-divisions We may notice, first of all, division into *provinces*. These were probably originally independent countries, but now are simply parts of the one state. Where the country as a whole is small, little self-government is given to the provinces. But in a large country like India the Governments of the different provinces act to a certain extent independently of one another.

Within the provinces we have what the Germans call 'circles' corresponding to what we know in India as *divisions*. Then come *districts* and lastly communities (towns and villages or groups of villages).

The divisions of a country politically will be determined by *political purposes*, by the existence of *naturally separating*

boundaries, by the history of the inhabitants, by trade relations *etc.*

It is an important question how far within a single country or empire the law and general rules of government election should be the same throughout, or whether there should be variety in the different provinces and divisions. There may be great differences in the physical, moral and intellectual condition of the people of the different parts. Should these differences be taken account of? The differences moreover, between the different parts of the country may have been historically caused, and the original laws of the district will have grown up in connection with this history. They will, therefore, be specially suited to the needs or at least the desires of the people. Obedience to them will have become almost habitual. The abandonment of these special local laws will, therefore, to a certain extent weaken the authority of the law. On the other hand serious disadvantages arise from want of uniformity *e.g.*, in the United States of America commerce is greatly hindered by differences between the laws of the different states. Special difficulties also arise in relation to the laws of marriage and divorce.

CHAPTER VIII.

§ 1—The Constitution of the State.

THE Constitution of a State," says Prof. Raleigh, " is a collection of rules which determine who are the persons in whom the powers of the State are vested, how their powers are to be exercised, and how the citizens are to be protected against abuse of power." It is defined by Woolsey as " the collection of principles according to which the powers of the government, the rights of the governed and the relations between the two are adjusted," and by Dicey as " all rules which directly or indirectly affect the distribution or the exercise of the sovereign power of the State. "

Kelke defines a Constitution as " a system of fundamental rules and principles for the government of a State defining the relation and powers of the different parts of the Government as between one another and as between the Government and the governed. "

Constitutional Law—is a statement of these rules and principles. It lays down the distinction between Legislative, Judicial and Executive functions of a state and enters into minute details regarding the discharge of these several functions by distinct groups of persons. The order of succession to the throne, the powers and privileges of the two Houses of Parliament, the responsibility of the ministers, the relation between the crown and the subject and also between the Executive and the subject—all these and the like are dealt with by Constitutional Law. Now where there is a written constitution, ' Constitutional law ' means all those fundamental rules contained in the document. It omits customary usages

of the people. But in a country with a customary constitution, that is to say, where there is an unwritten constitution, 'Constitutional law' means all such customs, common law, and statutes as are of a fundamental nature.

Written and Un-written Constitutions—Where those rules are *in the main* embodied in a written document we have a written constitution and where *in the main* they rest for their sanction only on long-standing custom, we have an un-written constitution. This latter is the case with Great Britain and Hungary. "To these might be added despotic states *e.g.*, Russia, whose government from the nature of the case is not based on a written constitution." But most organised states of the civilised world have adopted written constitutions, the American Colonies taking the lead and France following suit.

We must notice that this classification of states according to written and un-written constitutions is not a satisfactory one for the following reasons: (*a*) Constitutions are not either wholly un-written or wholly written. 'The constitution of England consists of law and precedents.' It rests partly on immemorial custom, partly on a series of statutes partly on conventional usages.' The Magna Charta, the Bill of Rights are written documents. The constitution of the United States of America, though mostly written, consists also of precedents and custom *e.g.*, the third occupancy of the Presidential chair though not repugnant to the constitution is forbidden by precedent. (*b*) Again, it is generally supposed that where there are written constitutions, arbitrary action on the part of the government is impossible, since the powers and provinces of the government are limited, defined and clearly set forth in the constitution. The supposition is a wrong one because restrictions on the actions of government do not follow merely from the existence of a written constitution. Where constitutional

laws *i.e.*, fundamental laws, contained in the constitution, can be changed by the ordinary process of legislature *e.g.*, Italian Constitution, these restrictions are of no value for they may be abolished at any moment by the government. Hence written constitutions do not as a rule stand as a barrier against arbitrary action of the government. Of course, where the provisions of the constitution cannot be altered by the ordinary legislative process, *e.g.*, Constitution of U.S.A., governmental powers are more or less limited.

'It is the force of custom and public opinion,' says Prof. Leacock, 'not any legal check, that limits the powers of the existing governmental body.'

It would appear, therefore, that to classify states according to their having either written or unwritten constitutions is a misleading one; since Italy and U.S.A. cannot be classed under the same group though both have each a paper constitution.

Within the last hundred and fifty years most of the great states (*e.g.*, France, Belgium, U.S.A., the British Self-governing Colonies *etc*) have adopted written constitutions—, the reason being the distrust of modern representative form of government. The people is unwilling to leave so much power in the hands of their representatives as would enable them to remodel the constitution of the state, according to the whims of the moment. Hence the people tried to have a written constitution, that is to say, a document containing the fundamental provisions and rules which make innovation less easy.

Rigid and Flexible Constitution—Constitutions may also be classified according to their *rigidity* or *flexibility*. Some constitutions are natural growths, unsymmetrical both in form and contents. They consist of a variety of different enactments, of different dates, intermixed with customary rules which are, however, regarded as of practically equal authority.

And organisms generally possess the power of change within themselves such changes being realised through the ordinary functional process of the organism. So constitutions of organic growth are generally modified by the ordinary methods of legislation. But if the constitution be an artificial structure or the result of a deliberate effort on the part of the state to lay down once for all a body of co-herent 'constitutional laws,' then the process of modifying such constitutions is in general more complicated than that which creates ordinary law. In the former case, the constitution may be called *flexible*, and in the latter. *rigid.*

A **Rigid** constitution is one which by its inherent nature is with difficulty changed or modified. The ordinary legislature acting in the ordinary way has no power to alter it ; the power of annulling or repealing the constitution or any part of it may in a *rigid* constitution (*a*) be reserved to an extraordinary legislative body, or (*b*) may be exercisable by the ordinary legislature when acting by some special method, or (*c*) there may be some special court entrusted with some particular duty *e.g.*, of declaring whether a new law conflicts with the constitution. The legislature in a *rigid* constitution being thus restricted in its powers, it is not a sovereign body.

A **Flexible** Constitution is one which by its inherent nature is capable of change or modification by the same body and same method of action by which an ordinary law can be passed repealed or amended. The legislature in a *Flexible* constitution being unrestricted in its powers is a sovereign body.

Though the characters of rigidity and flexibility with reference to a constitution are independent of its laws being written or un-written, it is generally found that laws under a *Rigid* constitution are almost invariably written, while those under a *Flexible* one, un-written. A Rigid constitution (especially when also written) usually contains provisions which

make innovation less easy than in the case of mainly un-written constitutions such as that of England any part of which may be modified by an ordinary act of Parliament. Nothing under a Flexible constitution can make any law unchangeable. Thus the British Parliament, as it now is, cannot bind itself or any future Parliament not to repeal or amend any law it passes.

Bryce and Sidgwick classify states according as they have flexible or rigid constitutions.

Written	*Un-Written*	*Flexible*	*Rigid*
Italy.	U. Kingdom.	U. Kingdom.	U. S. A.
U. S. A.		Italy.	France.
France.			

In flexible constitutions all laws stand on the same level; in rigid constitutions there are two kinds of laws, one higher than the other and more universally potent and there are likewise two legislative authorities one superior and capable of legislating for all purposes, the other inferior and capable of legislating only as far as the superior authority has given it the right to do so.

Flexible constitutions are older than rigid ones. It is not till the growth of some scheme of representation has made familiar the distinction between the authority of the people themselves and of their representatives, that truly rigid constitutions appear, for it is not still then that a method suggests itself of enacting a kind of law superior to that which the ordinary legislative body creates.

According to Seeley, the great disadvantage to a flexible constitution is the ease with which fundamental changes may be made and thus unless the nation be of a conservative temperament, valuable institutions may be swept away by a gust of unpopularity. The corresponding disadvantages of a rigid constitution are that clearly expedient changes are difficult to

accomplish ; hence danger of Revolution. Further, when changes are proposed, the attention of statesmen and citizens may be directed more to discussing the legality of the proposed changes than their practical expediency. This further involves a difficulty in finding a proper authority for deciding those points of disputed legality. Sidgwick is against the referendum as a solution because the general body of citizens are not qualified to judge on such matters. It would thus be best assigned to the judiciary. But certain precautions must here also be observed : (1) that the judiciary be not drawn into party conflict (2) that the legislative and excutive bodies should not have too great powers in the dismissal or appointment of judges.

Thus the ordinary legislation should have at least the power of initiating the changes in the constitution and the restraints on legislation which are left to the judiciary to interpret and apply, should be reduced to a minimum.

Significance and Scope of the Constitution—The Constitution of a state may not affect the essential character of the government of that state, since the 'obedience of the subjects has its root not in contract but in force'. Yet constitutions are of great importance because they express the character and history of a country and indicate the sanctions on which the government rests.

As we have seen the constitution should 'include all those *fundamental laws* or rules by which the powers of the government, the rights of the governed, and the relations between the two are adjusted'. But an actual written constitution often includes more than this. Thus in the case of U. S. A. the experience of 100 years has shown the possibility of corruption in the legislature itself and hence, to safe-guard the interests of the people, many clauses have been inserted in the various constitutions of the American states which are not of the nature of *fundamental laws.*

Amendment of the Constitution—In Great Britain and Hungary, the constitution may be ammended by the ordinary legal processes. The same is also true of Italy, but with most written constitutions a special method of revision is prescribed necessitating a more deliberate and difficult process. Thus in Spain, the election of a special parliament is required. In France the method is more simple. A revision can be adopted by a joint session of the Chamber of Deputies and of the Senate, a provision originally framed in the hope of easily converting the Republic into a monarchy. On the other hand, the process, in the case of the United States of America, is extremely complicated.

In Austria and Switzerland after an amendment to the constitution has been accepted by the Parliament it is then submitted to the votes of the people by means of *Referendum.*

§ 2. Different forms of the State.

Though in essence all states are alike in as much as they possess the fundamental elements of a population, a fixed territory, unity and government, yet a classification of states is possible on the basis of the structure of their governments. Governmental functions of administrative (or executive), legislative and judicial work may in one country be exercised by a single person according to the constitution or fundamental laws of that country. The constitution of a different country may allow these powers to be exercised by a few best citizens. Thus evidently there may be a classification of states according to the structure of their governments

Some writers seem to ignore the difference between forms of state and forms of government and thus confuse the two terms *State* and *Government.* In an early chapter of this book the difference between these two terms has been

clearly set forth. Prof. Burgess differentiates them by saying that the term government designates the ordinary mechanism of administration, while state designates the supreme body having absolute legal power. The fact is that government is one of the essential elements constituting a State. Hence there need be no confusion between 'forms of government' and 'forms of state.' The different forms of government constitute the basis of classification of States.

Forms of Government—By 'forms of government' we mean to express the idea whether the functions of government are exercised by a single person or a body of person *etc.*; in the former case we have a monarchy, in the latter case, either an oligarchy or an aristocracy. Thus monarchies, aristocracies, democracies—are so many forms of government. This is one way of testing and explaining forms of government. But there are other tests of governmental forms. These are *firstly*, whether the government is *immediate* or *representative*, Immediate government is that form in which the state exercises directly the functions of government. This form of government must always be unlimited, no matter whether the state be monarchic, aristocratic or democratic. Representative government is that form in which the state vests the power of government is an organisation or in organisations more or less distinct from its own organisation.

The *second test* is whether the government is *centralised* or *dual i.e.*, whether all governmental authority is concentrated in in a single organisation, or whether the state distributes the powers of government between two classes of organisations which are so far independent of each other, that the one cannot destroy the other or limit the powers of the other or encroach on the sphere of the other as determined by the state in the constitution *e. g.*, a federal government like that of U. S. A.

The *third test* of government forms is whether the government is *hereditary* or *elective.*

The *fourth test* is whether the government is *Presidential* or *Parliamentary.**

Thus to understand the meaning of 'forms of government' we should not only look to monarchies, aristocracies and democracies, but also to some other material tests indicated above.

Aristotle's Classification—Ethical and Numerical basis—The classification of the different forms of state dates back to Aristotle, and although the centuries which have passed since his time have brought with them many changes, his classification may still give us guidance.

Starting from an ethical point of view, Aristotle divides states into *good* and *bad*, or into *normal* and *perverted* forms. The distinction between these two classes is that in the good state the rulers rule for the good of the community. In the bad states they rule for their own advantage. The three good forms are: (1) Monarchy, or the rule of an individual; (2) Aristocracy, or the rule of the *few best*; and (3) Polity, or the rule of the majority modified by aristocratic and oligarchical elements, and exercised in the interests of the whole state. The three bad forms are (*a*) Tyranny or despotism *i.e.*, the rule of a monarch in his own interests solely; (*b*) Oligarchy, the rule of the few *rich* in their own interests; (*c*) Democracy, the rule of the mob or poor men for their own interests and often at the expense of the rich. Of the perverted forms, Tyranny is the worst and democracy, the least bad.

The principal upon which Aristotle proceeds would seem to be division according to number, *i.e.*, according to the number of people in whose hands the government rests.

* Burgess, *Political Science, Vol. II. pp. 1-10.*

'Aristocracy' as distinguished from 'Polity' is the rule of the few, as distinct from the rule of the many. Oligarchy, again, is the rule of the few rich, as distinct from the many poor.

Aristotle does not, however, keep entirely to this basis of classification. He points out, for example, that it is rule by the *rich* which is at the basis of his definition of Oligarchy, the *number* of rulers being theoretically unimportant. As a matter of fact, however, the rich are always few in number; so that for all practical purposes government *by the rich* becomes government *by the few*. We have seen also that Aristotle's first division of constitutions is into good and bad, a division which is certainly not made on the basis merely of number of rulers.

Monarchy—A true Monarchy where an individual can be found, who is by nature fitted to rule is the best form of government. But Aristotle hints that it is hardly a possible form. Further, the absolute form of kingship is particularly dangerous, because the king in this case is placed above the law and becomes an irresponsible ruler. Monarchy was the earliest form of government. Because the states were small, people of pre-eminent virtue were very few, and so it was comparatively easy to choose one or two of them for special political power.

Tyranny—Monarchy easily passes into Tyranny, which Aristotle defines as 'the irresponsible exercise of rule over subjects, all of whom are the equals and superiors of the ruler, for the advantage of the ruler and not of the subjects.' That is, the tyrannical ruler rules for his own interests entirely and cares nothing for the desires or needs of the people.

Aristocracy—Aristotle seems to mean by aristocracy the rule of the best (the lit. meaning of Aristos—best). But what does 'best' mean? Does it mean best in character or best in blood? In some places, Aristotle seems to incline to the

former as Plato does in his 'Republic'. But in other places he takes it in the Spartan sense *i. e.*, in relation to purity of descent. The advantages of Sparta were that the two kings checked each other and the nobles or Ephors were selected from the best families. Aristocracy is distinguished from Oligarchy and Democracy by its superior birth or rank. This keeps it proudly aloof from mixing with democrats and is free from petty and sordid ambitions which appeal to Democracy. At other times Aristotle seems to incline to define Aristocracy in terms of virtue and he finally decides that the best form of government is not aristocracy but *Politeia*. By this term Aristotle seems to mean the rule of the middle classes and thus including the best people in the sense of virtue, energy and finance rather than blood. Aristocracy has many faults, the chief of which is arrogance and this often provokes the common people into Revolution *e. g.*, the French Revolution.

Oligarchy—Means the rule of the few over many (Oligoi —few). The advantage of this is that rule is better carried on by the few than by the many. But it depends on a right selection to get the proper few. In this respect Aristotle thinks that Oligarchy is inferior to Aristocracy which is also the rule of the few but where the few are carefully selected from good families. In this aspect Oligarchy is inferior because any one of whatever birth may find his way into the government of an Oligarchy, specially if he is rich.

Polity—Both Democracy and Polity rest upon the principle that the many, though individually inferior to the few, will be collectively wiser and more, virtuous, and also upon the principle that equality in one point, *e. g.*, personal freedom, is absolute equality. All men should have equal power if they are free citizens and there should be no other kind of qualification. This, of course, leads to the rule of the majority.

The distinction between Polity and extreme Democracy is that Democracy keeps more closely to the principle just laid down. It also holds that the rule of the majority may be made so absolute as to leave the interests of the minority out of account. Polity, on the other hand, in the stricter meaning of the word, has been described as a *fusion of Oligarchy and Democracy i. e.*, the Democracy is tempered by the introduction of Oligarchic elements, though the total result is nearer Democracy than Oligarchy. A Polity differs from an Aristocracy in that while an Aristocracy represents *personal freedom*, *wealth* and *virtue*, a Polity represents only personal *freedom* and *wealth* and comparatively little of the latter. Aristotle, on the whole, seems to think that Polity is the best practical kind of constitution. It corresponds to the natural equality of the citizens. The alteration of rulers allows for the identification of the good man and the good citizen, and this alteration is possible only in a Polity or a Democracy. Aristotle argues that there should be *safeguard against the absolute rule of the majority*. He would make arrangements, therefore, for a combination-majority of both rich and poor, so that the rich might have influence in the state somewhat larger than their mere numbers would allow them. A true Polity would seem to depend upon the supremacy of the middle classes, and according to Aristotle only that state is secure where the middle classes have the chief power in their hands.

Democracy—The characteristics of Democracy are that all citizens are eligible for appointment to offices of state and are appointed by all. Rule is by alteration, and every magistrate has only a short tenure of office. In order to prevent oppression of the rich by useless prosecutions it should be arranged that all fines realised should be devoted to the service of the gods.

Aristotelian Cycle or the historical succession of the different forms of government according to Aristotle—Aristotle believes that different forms of Government succeed one another in a more or less fixed order of development. The earliest form is, as we have seen, a Monarchy. The Monarch is apt to become tyrannical. This leads to revolution, and the noble leaders of the revolution seize the chief power of the state and form themselves into an aristocracy. This again will degenerate into an Oligarchy which will be followed by a Polity, at first ruling for the good of the whole but afterwards degenerating into an extreme democracy in which the interests of the poor are alone considered. The Democracy will probably be again succeeded by a powerful monarchy.

Though in some cases Aristotle's Cycle has been supported by the facts of History (as for example, in the French Revolution, democracy giving place to the strong imperial rule of Napoleon) yet on the whole it must be confessed that changes of Government have not always taken this course. A monarchy if it is overthrown, tends to be followed directly by democracy without any intervening aristocratic changes.

Criticism of Aristotle's Classification -- Aristotle has been criticised because he based his classification on *numbers* but we have already seen that he introduced other classifications as well (*e.g.*, good and bad). Bluntschli cirticises Aristotle because he leaves out Theocracy *i.e*, states in which there is no human ruler but the Supreme power is attributed to God. Others again have objected that Aristotle has not included the mixed state. Cicero considered the Roman state to be a mixed state.

But the real criticism of Aristotle's classification lies in its *inadequacy*. His terms Monarchy, Democracy etc., as applied to the complex organisation of modern states, lead to confusion.

Russia and Great Britain, according to his division, should be called monarchies as in each country there is a *sovereign*. But there is a gulf of difference between these two Monarchies. Thus it is seen that his division offers no adequate treatment of constitutional or limited monarchies. Again, if a democracy means, as Aristotle's polity does, a system of government where the political power resides in the mass of the people U. S. A. and Great Britain ought to be classed together ; but we know that there is much formal difference between the governments of these two countries.

In other ways, too, Aristotle's classification does not offer an adequate treatment of the subject. For instance, it does not take account of the distinction between a *federal* and a *unitary* government. Moreover, it makes no 'distinction between governments according to the differences of the constitutional relation of legislature and executive'*

There are many other methods of classification of forms of state, for example, we may classify states according to the amount of control which the people have over the Government *i. e.* according to the distribution of political rights amongst the people. We might then have the classification of (i) unfree, (ii) half-free (iii) free. Monarchy might fall into any of these classes according to the amount of control which the people have over the king. Tyranny is of course unfree ; Aristocracy in which only a portion of the people has political rights, would be put in the class of half-free. Democracy is free as far as the majority are concerned but it may become a tyranny of the majority over the minority.

Montesquieu, Rousseau and Bluntschli have each tried to improve upon Aristotle's classification, but the same inade-

* Leacock, *Elements of Political Science*, *p.* 116.

quacy as applied to the complex organisation of modern states, attaches to their classifications.

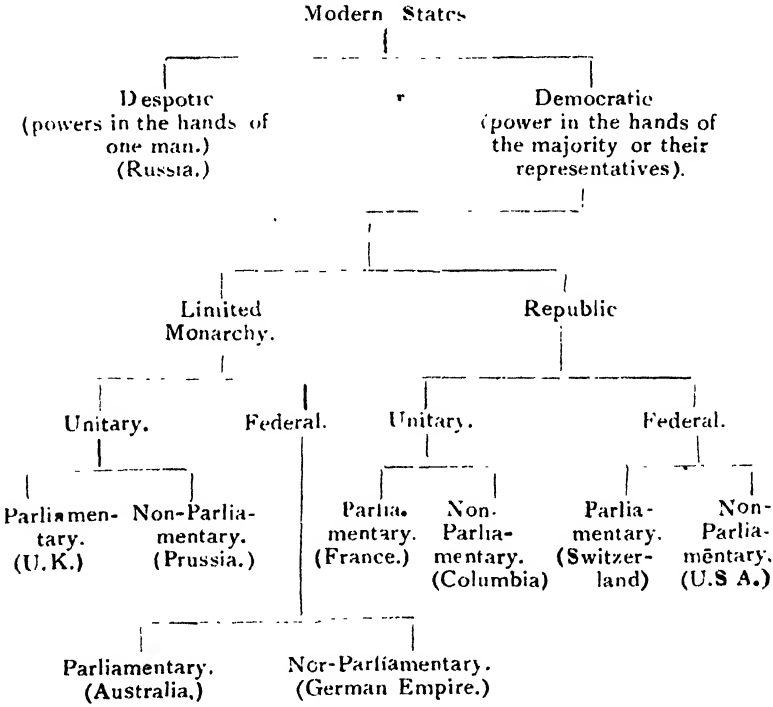
Montesquieu attempted in his 'Spirit of Laws,' a division of states according to republican, monarchical and despotic form of governments. By republican, he means a government where the people as a body has the sovereign power ; monarchical, where a single man governs, *but only by fixed and established laws* ; despotic, where a single person governs without any law but according to His will.

Bluntschli simply adds another normal form of state theocracy, to the 3 normal states of Artistotle

Modern classification—Following most modern writers, Prof. Leacock presents a classification of states, based on the *location of supreme legal power* and also *on the prominent features of existing governments.*

He classifies modern states, first of all, into *despotic i. e.*, where the supreme legal power is in the hands of one person, and democratic *i. e.*, where the supreme legal power is in the hands of the majority of the people, or their representatives. He next subdivides democracies into *limited monarchies (i.e.*, governments with the *nominal* headship of a personal sovereign) and *republics* (*i.e.*, where the chief executive is appointed by the people). His further divisions depend on the two other prominent features of existing governments. —(1) Whether the Government is *Unitary* or *Federal.* In a Unitary Government, the authority of provincial bodies is derived from the Central Government, the latter being legally empowered to put an end to the organs of local authority. In a federal Government, the central and local authorities remain side by side, neither being legally competent to destroy the other. France is a Unitary, United States of America is a Federal Government. (ii) Whether the Government is *Parliamentary or Non-Parliamentary.* In England and France we

have a Parliamentary or responsible form of government that is to say, the executive is virtually appointed by, and holds office during the pleasure of, the legislative body. The government of the U.S.A. is non-Parliamentary because the legislature does neither appoint nor dismiss the executive. Prof. Leacock's division of modern states is given below :—



Leaving Aristotle, we may consider the four fundamental forms of Government—*viz*, Theocracy, Monarchy, Aristocracy and Democracy. But before we do that let us glance at the *differences between the Aristotelian State and the state of modern times.*

Differences between Aristotle's state and the state of modern times—There are great differences between Aristotle's State and the State of modern times. For this reason

though the same political *terms* may be used the *conceptions* corresponding to them may be quite different.

(*a*) The Aristotelian State was a City State. As Seeley says (p. 32) "Aristotle is silent about all states which are not also cities. Politics with Aristotle, should be translated not into *science of states* but into Science of Cities." Politicians since his time have almost forgotten the important fact that most modern states are what may be called *country-states*. The important point about this distinction is the great difference in population. This difference brings many other important differences in its train. In a large country state, there may be differences of language which makes the task of Government more complicated. The difference of population also introduces the difference between direct democracy and indirect or representative democracy. In a large state it is impossible that everyone should take part directly in the Government.

(*b*) Another difference is the growth of individuality in modern times. In ancient times a single individunl was of little consequence. He was simply the kinsman of some one else or a member of the state and of no account except as a member of the state. He had no independent right. He was simply a fraction of the state. Now in modern times he might be said to be an integer in the state. Many influences led to this modern emphasis upon individuality. One of the most important influences in Europe was the influence of Christianity with its assertion of individual rights, and its demand that every man should live according to the dictates of his own conscience. Then the Teutonic institutions introduced the idea of allegiance to an individual rather than to the state. At the close of the middle ages also the Renaissance and the Reformation were powerful influences in increasing the sense of individual, worth. The Renaissance freed men from the bonds of authority in

intellectual matters and encouraged them to observe and to reason on their own account. The reformation in its revolt from the authority of the Roman catholic Church re-emphasised the Christian demand that each individual should have liberty of conscience.

(c) Coming to differences in regard to the *particular forms of constitution*, we observe first that in a sense the *modern absolute monarch* has more power than the ancient monarch. He can legislate whereas the ancient monarch hardly knew what legislation meant and to a great extent followed custom. *Constitutional monarchy* again *in modern times* involves far more restrictions upon the power of the monarch than was the case in ancient time. In regard to aristocracy, the difference is that in ancient times they looked upon themselves as the state. All outside their own privileged class were of no account whatsoever. In modern times they look upon themselves as holding their power in trust for the nation as a whole. As Woodrow Wilson says 'an ancient aristocracy *constituted the state*, the English aristocracy merely *controlled* the state' Ancient aristocracy monopolised *power*, *office* and *citizenship* as well. Modern aristocracy monopolise still *power* and *office* but not citizenship. The greatest difference is in regard to democracy. The ancient democracies were really only wide aristocracies. In most cases the *active* citizens constituted perhaps only a minority of the total population. This minority had leisure for political life only because their work was done for them by artizans and slaves wholly without political rights. Further, the difference in population involves the great difference between direct democracy and indirect or representative democracy. The ancient states were so small that the people were able to take a direct part in the Government. In modern times they can take part in the Government only through their elected representatives. We may note in passing that

for this reason modern democracies are hardly so pure a form of Democracy as ancient Democracy. The elected representatives tend to form themselves into a privileged class and thus an aristocratic element is introduced into Democracy.

§ 3.—Theocracy.

Theocracy is a form of State which belongs to the infancy of the human race.' It represents the rule of God. In the early youth of humanity the sense of dependence upon the divine being and the influence of God, upon the life and education of men was direct and powerful. Theocracy involves the preponderant influence of the priests who are supposed to understand the will and utterances of God. *It does not now exist anywhere.*; but a historical example is Israel which claimed to have God as ruler *i.e.*, the Government was more religious than civil. The earlier history of Islam also exhibits the Theocratic idea which still persists in shadow in the Caliphate of the Sultan of Turkey. The Madhi of Soudan also favoured the Theoeratic theory.

The ordinary characteristics of theocratic States are (*a*) a close intermixture of law and religion, with a preponderance in favour of the religious elements; (*b*) the principle of authority is exalted to a superhuman height, *i. e.* the ruler is raised to an inaccessible height and becomes omnipotent; (*c*) organs of Government are imperfectly developed and very often unchangeable; (*d*) the secular magistrates, are subordinate to the priests; (*e*) harsh criminal jurisdiction and cruel punishment prevail; (*f*) the education of the people is entirely in the hands of the priest class. *

* Bluntschli, *Theory of the State*, P. 354.

§ 4.—Monarchy.

Monarchy varies widely in its forms from despotism to the most moderate constitutional Monarchy. Despotism is really savage form found only in countries in past ages that were passing towards Monarchy. It may have been an original form, but when we see it, it is really a transition from theocracy to kingship. Despotism is intolerable where people have rights. There are sometimes despotic monarchs *i.e.* monarchs who approach despotism but they are exceptions and are usually hampered by a constitution. There are various limitations of Monarchy which prevent it from becoming despotic *e.g.*, (1) the powers of the nobility (2) the area of law and justice which is presided over by judges. (This materially circumscribes the power of the monarch and prevents him from becoming despotic). (3) The constitution, which regulates not only the subjects but also the ruler, is a distinct discouragement of despotic attempts.

History of Monarchy—In tracing the history of monarchy we have first to notice :—

(*a*) *Family kingship*—It was formed among the *Greeks and early Germans*, where the king was king in virtue of belonging to a *given family* which was mythologically *connected with the Gods*.

(*b*) *National Monarchy*—It was formed in ancient Rome where Romulus became the first king not in virtue of any kingly descent but because he was the founder of the city. In that case kingship was a personal magistracy and the king was the high priest of the nation as well. Thus the Roman king was a human and a national ruler, *neither divine nor hereditary*. He wielded almost despotic power. He had the whole military forces of the state at his disposal and the absolute Government of the richest and most important

provinces. He decided on questions of foreign Policy and appointed all the most important officials.

(c) The feudal Monarchy—It depends upon personal fealty of vassals to the king. This was very largely a Norman idea and was carried by them into various parts of Europe and into England. Sometimes it took the form of absolute submission of the vassals to the kings, sometimes the vassals enjoyed a large amount of independence. In France the real sovereign was not the king but the vassals, each in his own dominion. The English vassals were attached to the crown by the homage they rendered for their fiefs.

It was obvious that the stronger the nobles were, the less was the king's supremacy over them. But this again was a personal method. The people in the humblest ranks disliked the feudal monarchy because of the multiplicity of masters. They had, sometimes a king, sometimes the nobles—but always exactions. The king was regarded as the head of the army under feudalism. He was also regarded as the supreme judge to whom final appeal lay. But he was not allowed to raise taxes by himself ; that had to be done in conjuntion with the vassals.

(d) Monarchy limited by class Privileges—Gradually the Feudal monarchy became developed into a *monarchy limited by class privileges.* The nobles began to act as a body and to control the administrative and judicial powers of the king. The administrative powers of the king were greatly hampered by the fact that his orders had to be carried out by officials who possessed a very considerable amount of independence. His legal decisions also were not always his own. In reality he had often simply to carry out decisions made by the courts of law or by other princes. Over military arrangements, he had a very limited power as the forces of the nation were to a great extent under the immediate control of the nobles and if

mercenaries were employed, the means of paying them could be provided for only with the consent of the nobles. General taxation also was in the hands of the nobles.

(e) Absolute Monarchy—The limited kind of monarchy (as described above) did not immediately pass into modern constitutional monarchy. There was a reaction, on the continent, in the direction of absolute monarchy, especially in France and Spain. In France it came after the feudal monarchy which was set aside in the reign of Louis XI (1461—1483). In Spain it rose under Philip II (1556—98). In France the highest level of absolute monarchy was reached in the reign of Louis XIV who concentrated the whole force within himself *i. e.*, he completely identified the state with his own person His personal welfare was the welfare of the state, his individual rights were the rights of the state. Political theorists, jurists and ecclesiastics all united in spreading this idea. Then began the reaction and in the 17th and 18th centuries the omnipotence of the state was emphasised. This culminated in the French Revolution. In England the only approach to absolute monarchy was made by James II and the result was that he had to leave England. Absolute monarchy has now almost vanished from Europe except in Russia. Up till recently Turkey had an absolute monarchy, but apparently it has become a constitutional monarchy. The Empire of Germany is sometimes called an absolute monarchy but it is also governed by the council of the Empire and the Reichstag.

(f) Constitutional Monarchy :—Constitutional monarchy such as is found in England, Germany, Austria, Italy *etc*, is a monarchy which is limited by a constitution *i.e.*, in which the initiative power of the sovereign is limited by the constitution which provides for parliamentary and cabinet jurisdiction. Each such jurisdiction is a limitation of the original powers of the sovereign. These powers have mostly been curtailed in

Great Britain which is the most limited monarchy in Europe. In England the king has a good deal of personal influence in various directions but the policy of the country is not dictated by him but by the cabinet.

In Germany the constitutional monarchy leaves a good deal of initiative to the sovereign. He has largely in his hands the shaping of the foreign policy of the Empire and control of the army. He is more or less the autocrat in these departments but in the very important matter of raising money he is helpless. That is the function of Parliament. Again in matters of law and jurisprudence he is almost without any power. But still the German Emperors retain several of the features of absolute monarchy, by controlling and making important appointments in the government, as well as in diplomacy.

The various stages of conversion of absolute monarchy into constitutional monarchy are interesting.

I. **England**—(*a*) In England, in the reign of John the battle was fought and when the nobles won, they forced John to issue the Magna Charta. (*b*) A second stage was reached when the king's rights were declared to be not *divine* but human like those of the Lords and Commons (Charles. I) (*c*) Another stage was reached in 1689 by the *Declaration of rights* which secured the right of the Parliament over the king. (*d*) A further-step was taken when the ***ministers*** were declared to be responsible to Parliament for the Government of the country. Consequently the king was freed from responsibility and power. Parliament grantstaxes, controls the executive Government. But the judicial administration is made independent both of the sovereign and of Politics.

II. **France**—Mediæval monarchy in France was of the absolute variety but after the Revolution it has been more

or less constitutional. Nepoleon was determined to make it democratic, but his attention was so much occupied with the military concerns that he was hardly a constitutional monarch but rather a military dictator.

After his fall, the throne came to Louis XVIII who gave a charter granting constitutional rights as a gift from the King. Still the French King had more power than the English King of the same period.

In 1830 there was a small revolution in France and the result was that the constitutional rights granted in the charter were made into a reality.

In 1848 there was another Revolution in France and a Republic was formed. Louis Napoleon seized his opportunity and in course of time the Republic voted itself into an Empire.

In 1870 came the Franco-Prussian war which shattered the Empire and drove Napoleon into exile. Then began the Republic which lasts still now for 43 years.

III. **Germany**—The Holy Roman Empire came to an end in 1806. It had been for more than a century previous merely nominal. The power had passed from the Emperor to the constituent kingdoms. Out of the ruins of the Empire rose Prussia as a great independent state. Frederick the Great of Prussia (1740-1786) may be considered as the father of constitutional monarchy in Europe. He regarded the king as a servant of the State and subordinated royal rights to royal duties. In 1815 the Confederation of German states was made and they adopted Constitutional monachy. These States were Nassau, Luxemburg, Hanover, Hesse, Bavaria, Buden, Wurtemburg, Saxe-Meinengem. Then they formed chambers on English and French models. In 1847 Prussia became a limited monarchy. In 1858 Austria was compelled to consider a constitution and in 1861 it came into force. In the war between Austria and Prussia, in 1866, Prussia, defeated Austria, and

beeame at once the most prominent state in the Teutonic federation. In 1867 at the instance of Prussia the north-German federation was formed. That was an arrangement to have a common policy for the constituent States in foreign and military matters. The Prussian king was taken as President and the leading administrator was the Federal Chancellor.

The German Empire in 1871 after the defeat of the French :—This was really an expansion of the Bundesrath. But it now appointed an Emperor *viz.* the king of Prussia, a Council of the Empire consisting of king and princes of Constituent States, and an Imperial Parliament, Reichstag. This really is a federation rather than an Empire and it may be questioned-whether the German Emperor is the ruler of Germany or the President of its Federation.

Every country in Europe except Russia and Turkey is now constiutional. Turkey has b~en granted a constitution but it has not yet begun work.

False Idea of Constitutional Monarchy : A constitutional monarchy is distinctly limited but there is misapprehension as to the extent of limitation. Many theories of constitutional monarchies which have been put forward have practically reduced the king to a non-entity. It was said, for example, by Rousseau that '*the people will, the king executes.*' This makes a separation between the king and the people and reduces the king to a mere servant of the people. Much the same result follows from the formula that the *king has a right to rule and govern, but does not exercise it.* This leaves the king with a mere empty title. He becomes a mere symbol at the head of the state instead of a living and active individual, and moreover, his personal character becomes a matter of indifference. There is little difference between this and the formula of M. Thiers that '*the king reigns but does not govern*' ; the word 'govern' here means to undertake the practical direction

of the policy of the state. To refuse this to the king is to deprive him of all real power and leave him with only a formal and empty dignity. Probably the mistake here arose from a confusion between government and 'administration.' The king certainly does not concern himself with the details of government, which are referred to by the word administration, but this does not mean that he is deprived of the right of government in the wide sense of the word. All such attempts would seem to reduce the king to a mere non-entity and to imply a separation between the king and the people.

General Characteristics of Constitutional Monarchy 'Constitutional Monarchy,' says Bluntschli, 'is a combination of all the other forms of State. It preserves the greatest variety without sacrificing the harmony, and unity of the whole.'

The best way of realising the position of a constitutional monarch is to consider him as an integral part of the constitution. He is not above the constitution nor outside it but *within* it. He is not merely a lifeless figure-head; he stands above the other members of the state and can exercise the rights of a free personality. But his powers and dignity are regulated by the constitution which he *must* respect and carry out. He is bound to obey the laws of the state. He can only expect and demand obedience as regulated by the Constitution and the laws. He has a very small share in legislative powers and none in financial decisions. In administration the king has a considerable power in some countries but very little in others. But this power he exercises in co-operation with his ministers, for the king's decrees and commands are not valid until the royal signature has been countersigned by a minister. Ministers are absolutely responsible for legislation and administration. The king has no responsibility. Further the king has no authority over jurisprudence and justice.

The fundamental principle of monarchy is *(a)* the personal elevation of the king as the organ of supreme power, *(b)* concentration of the highest powers in the king. *Legally* the king is definitely recognised as the seat of authority and initative. But *as a matter of fact* he only acts in accordance with the advice of his ministers. He alone can give the royal assent which makes a bill become a law. Constitutional monarchy avoids two opposite extremes : (i) that the king is a puppet ; and (ii) that the king is the only ruler.

§ 5.—Aristocracy.

The word *aristocracy* in modern English means people of blue blood *i.e.* members of the noble families. But as used in Greek politics it means the rule of the higher classes In Sparta there was a race of nobles who ruled over the common mass. These nobles began with the beginnings of Sparta and their families retained political rights by heredity. In Sparta it was possible because they were a small people, but this kind of Government would not be possible in a modern European first class power. The Spartans were divided into 3 classes—Spartiati, Perioci and Helots. All political power was in the hands of the first class. All the public and private concerns of life were looked after by the State. The Spartan constitution consisted of 2 kings, a senate (*i.e*, Council of Elders) of 30, an assembly of all the citizens (*i.e*, members of the first class) above 30 years of age and 5 Ephors. Gradually all political powers were centred in their hands.

The Roman Republic was according to Bluntschli the most powerful aristocracy the world has ever seen. The Roman Patricians kept in their own hands the high offices of the state. But ultimately the Patricians were compelled to throw open all the highest offices to the Plebeians. The Senate was the

highest council in Rome and was essentially aristocratic. It was originally an aristocracy of birth, but later became an aristocracy of office. The Roman aristocracy was remarkable for its education, wealth and knowledge and experience in public affairs.

Many of the mediæval Governments might be described as aristocratic. Feudalism was aristocratic in Government from one point of view.

In modern times there is a strong and increasing aversion to allowing the hereditary principle such overwhelming influence as it had in ancient times.

N. B. There is no *aristocratic state* in modern Europe in its technical sense. France and Switzerland are republics; the rest are monarchies more or less limited, except Russia. But *aristocracy* prevails in many countries. The English aristocracy is usually considered and is usually regarded as the most representative in the world. For it has no foolish law of intermarriages, for by it new blood is frequently brought into old families. Again the ranks of the nobility are recruited from governors, soldiers, plutocrats, scientific men and other distinguished men and thus a *nobility of genius* rose up within the aristocracy of blood This makes it more comprehensive and more sympathetic and more representative.

The phases of Aristocracy :—Aristocracy varies in different countries. It is sometimes based on birth, sometimes on old age, sometimes on learning, sometimes on military genius.

Demerits :—It is usually characterised by (i) External pomp (ii) Harshness of rule (iii) Excessive rigidity and (iv) Exclusive attention to hereditary right.

Merits :—Aristotle says, the character of aristocracy is virtue, that of democracy, freedom. It is the rule of the best men. According to Montesquieu the essential principle of aristocracy is moderation but really it is moral and intellectual superiority that constitutes the essential principle. One good

feature of aristocracy is that they show great respect for law and order.

Oligarchy.—It is more a theoretic division of state than a real state. It means the Government of the few and belongs somewhere between an aristocracy and a democracy Aristotle says that an Oligarchy tends to become an aristocracy, but it has this distinction that while the aristocracy of Aristotle depends upon heredity the leaders of an oligarchy may be taken from any class on personal grounds such as the possession of influence or wealth. In modern times the possession of wealth gives opportunities for intellectual culture which raises often the ability of the wealthy above the average level of the masses. So the term Oligarchy while originally implying only the possession of wealth has come also to imply indirectly the qualities which were included by Aristotle under the heading of aristocray.

The Oligarchy is rare in ancient Greece. Sometime Sparta is said to be an Oligarchy but we have seen that it is an aristocracy, and although every aristocracy is an Oligarchy, the two are technically distinct. For examples of Oligarchy we must come down to mediaeval times. *Venice* was an Oligarchy in so far as it was governed by the council of Ten. Another example is Florence which was technically a republic and, at any time, a tyranny but it became a more or less hereditary appanage of the House of *Medeci.*

An Oligarchy has certain advantages in that *a few* dispose of the affairs of the many. But it has great disadvantages for these few may not adequately govern and satisfy the mass of the people Indeed Venice became almost a Trades-Union and was very jealous in its legislation so as to prevent trade rivals The tendency of Oligarchies is either to become aristocracies or democracies. *The Oligarchy is the least stable form of Government.*

§ 6.—Democracy.

The principle of Democracy is that the chief political power should be in the hands of the people themselves. It is divided into two classes—Representative and Direct. In the former case the citizens do not attempt to legislate but elect representatives; in the latter case the citizens in public assembly manage the method of legislation or at least control a part of the process.

Direct Democracies—are not found in modern history but in ancient Greece there was an example of it in Athens where the Ecclesia had all important business brought before it and every citizen had the right to speak. The decisions of the Ecclesia were final.

It appointed ambassadors, decided questions of peace and war, and the extension of franchise. It controlled the finances. Besides, it had to approve and sanction building of temples, roads and public edifices. The people of Athens were perhaps the only people of antiquity that could adequately discharge the method of legislation. They were exceptionally intelligent. But even in Athens the Ecclesia sometimes erred through popular excitement. The Ecclesia was counteracted a little by the Boule (*i. e.* the Council of 500) ; but from B. C. 510 onwards the Ecclesia was supreme. The Executive Officers in Athens were called Archons. These were chosen from the whole people by lot.

Merits—Direct democracy has the merit of discussing public affairs in the full body of citizens. Direct Democracy certainly exercises to some extent an elevating influence upon the citizens. Their faculties are developed and the individual is encouraged to take interest in public affairs. There is very little temptation to legislation on behalf of a particular class.

Demerits—The defects of direct democracy are (i) freedom from control enjoyed by the democratic body, (ii) its impatience of any authority (iii) its liability to popular passions and (iv) its mass movements. A further defect is that excessive attention is paid to *equality* and none to *quality*. And outstanding man is logically impossible in a democracy. Hence the Athenian device of Ostracism by which a citizen might be exiled if he acquired preponderating influence in the state.

The principles of direct democracy are *freedom* and *equality*. Everyone was to have a share in the government and everyone the same kind of share. In order that all should acquire equal chances, appointment to offices was by *lot* and lest any should acquire permanent superiority there were freequent changes of officials.

Conditions of Direct Democracy—A direct democracy is only possible in a small state where an assembly of all the citizens may be possible. The other condition is that the citizens should have sufficient leisure for political business and in order that this may be secured life must either be exceedingly simple or the greater part of the ordinary work of the citizens must be done by slaves.

Indirect Democracy and the Electorate—Representative Democracies have been rendered necessary by the great size of modern states. It is simply impossible for all citizens to meet together in one assembly and hence they elect representatives who shall carry on the work of government.

The word '**Electorate**' means the proportion of the entire citizen body that are *active citizens*, that is to say, that may at any time or in any way legally exercise governing authority. The electorate includes only those who enjoy the right to vote in a country. In a *pure democracy* the electorate would coincide with the entire citizen body and would directly exercise all governmental authority. But in modern typical democratic

states the electorate or voters are only a fractional part of the entire population and even this fractional part does not exercise all governing powers, which reside in elected officials and representatives. The limitations put upon the extent of the electorate are various such as a certain minimum age-limit, sex, citizenship, property qualifications, and mental and moral qualifications Thus the election of officials and representatives is made by the citizens except the lunatics, criminals, persons under certain age, and up till now, women.

Hence a modern democracy, (in as much as the electorate is only a fractional minority of the whole population and in so far as the governmental power resides in elected officials and representatives of the people,) is not so pure a democracy as the ancient direct democracy.

Control of the people over the Government in Modern Democratic States—The actual political authority exerted by the mass of citizens is determined by the control exercised by the electorate over the other organs of government: (*a*) *Representation* and *election* are the two means by which the electorate keeps in touch with the other organs of government. (*b*) *Frequent elections and desire for re-election* make the representatives conform to the wishes of the electoral body and act in accordance with their desire. (*c*) By means of *recall* (*i.e.*, a rule by which a certain number of voters by petition may demand a popular vote as to whether or not a certain elected official shall remain in office) the electorate may remove its representatives. (*d*) *Public opinion* by means of public meetings, *petitions* and *the press* also *indirectly* influence the action of the government. (*e*) The electorate exercises a powerful influence over the government *by means of political parties*.

We have not yet exhausted the amount of controlling authority of the people in matters of government. In some

democracies certain functions in direct interference are reserved to the people. They may, for example, vote directly on constitutional laws and sometimes even on other laws of great importance. There may be want is called a *Referendum*, according to which no law is valid until it has received the direct sanction of the people. Or again, the people may have the right of *Initiative*, that is, they may be allowed to decide by vote what measures are to be brought before the legislature. Then again, the people may have what is known as Plebiscite, in which a certain question is submitted to popular vote.

Representative democracy is found in Europe, in France, and in North America; also to a certain extent in Switzerland; but Switzerland is partly a direct democracy in as much as many questions are referred to the whole people for settling. England though technically a monarchy is really a democracy.

Aristocratic tendencies of Modern Democracy—In a typical modern democracy, the people govern through the officials and legislate and control the administration through the representatives. The introduction of the representative principle involves a departure from the rule that one man is as good as another for the purposes of government. The representatives chosen must be qualified men *i.e.*, those who have the requisite skill in matters of government. The representatives form or have a tendency to, a kind of aristocratic group of rulers. Thus Sidgwick says, "Modern democracy is really a combination of aristocracy and democracy," Further, if the members of the legislature are unpaid, an oligarchic element is introduced because in this case, only men with a private income will have sufficient leisure for Parliamentary work.

This aristocratic and oligarchic *element* may, however, *vary greatly. It may be decreased* by the use of such measures as the *Referendum* (*i.e.*, right of the people to have all measures and acts passed by the federal council or assembly referred to them;

until these measures receive the sanction of the people, they are not valid) and the *power of Initiative*. Also the members of the Legislature may be given what is called a *Mandate i.e.*, they may receive full instructions form their constituents as to how they are to vote on any particular question and may not be allowed to exercise their own independent judgment. Again, there may be *frequent elections to Parliament*, so the representatives may be made to give an account of their doings comparatively often to their electors.

On the other hand, the aristocratic element will be *strong*, if the duration of Parliament is long, if there is a habit of choosing representatives of proved ability and leaving them untrammelled by pledges or mandate, and finally, if executive appointments are given to the persons best qualified to hold them and not simply by rotation or by lot.

The increasing aristocratic tendencies of modern democracy is shown by the prevalent Cabinet system of government which wields enormous powers in the state. Cabinet ministers form a council of, say some, 20 members who are chosen from amongst the members of the legislature, who again are elected by the people generally. This council of ministers practically guide the state. Though we often say that in a democratic country the people rule, yet it is the aristocratic Council of ministers which is at the top and governs the country.

A recent article in "The Nation," called the Re-statement of democracy, emphasises the aristocratic tendencies of modern democracy. "The member of Parliament," it points out, "is apt to consider that he knows much better than the people what their real interests are. He distinguishes the real or rational will of the people from the crude, irrational will which they are often inclined to express. The members of Parliament also are under the control of the cabinet ministers, so that the people's will is twice modified before it is put into effect. It is the

little aristocracy of Cabinet which determines what laws shall be passed how much money shall be spent etc."

This aristocratic element does this benefit to the country that it prevents mob-rule. Representative democracy is very secure against Revolution, because the people, at fairly frequent intervals have the power of continuing or over-throwing the existing government. The government-making power is, in all countries, ultimately in the hands of the people. But, in democratic governments, this government-making power of the people is organised and is felt at every step and is not left to find an out-let through the irregular methods of Revolution.

Democracies do not have the show and display of aristocracies but they are more conversant with the needs of the lower classes and they take a more sympathetic interest in the poor.

Universal Suffrage—Women and Negroes—The electoral body in a country is not, as we have already seen, identical with the whole body of citizens. Citizenship means membership of a State. A citizen owes the state allegiance and in return for it may claim protection. The natives or citizens of a state have, as a rule, the following rights :—the right of permanent residence, the right to protection, the right to exercise voting power, the right to hold a public office. The aliens can only claim the second right and in some countries under certain conditions, the third right also. But even this power of voting is not given to all the citizens of the state. The electorate body constitutes only a minor part of the citizens of a state. The democratic tendency of the 19th century tended in many countries to extend this voting privilege among the people so as to be compatible with the idea of 'Universal suffrage.' But even in countries where this principle of 'Universal suffrage' is the rule, the people entitled to vote represent only an insignificant fraction of the whole

people. Insane persons, idiots and criminals are excluded from voting, as also the minors, and this exclusion is reasonable. But there seems no reason why adults with no mental derangement should be excluded. In this category fall the *women* and the *Negroes*. The main reasons alleged by Mill for the direct participation of women in the state are : (*a*) *The object of representation is good Government to which women and men are equally entitled. But the women are not represented.* This contention seems quite invalid. A mere boy of 10 may claim to exercise this right upon the same ground. Hence the right to be well-governed does not involve the right to take part in or to control, the Government ; (2) *women are given the same rights as men in private law, they should also be given the same right in public law.* But public interests are more varied and complex than mere private interests ; (3) *many nations which deny all political rights to women, bestow the supreme power of government upon a queen.* But this is not a general rule. However, the strongest argument that has been forwarded in favour of Woman Suffrage is that women are as *qualified as men* or at least *sufficiently qualified.*

"Against these arguments it has been urged that women, being mentally inferior to men in those particular aptitudes required for the proper exercise of political right, had better be excluded. It is also claimed that women are for the most part dependent for their political convictions on the opinions of a husband, father or other male relation ; they are thus already represented in an indirect fashion, and to give them a vote would unfairly duplicate the voting power of their male relations.'* Bluntschli argues against Woman Suffrage on the following grounds : Longstanding usage in all civilized nations goes against any new change ; womanly virtues, such

* Leacock's *Elements of Political Science.*

as love, housewifely skill. a fine sensibility, sweetnees of character etc., would suffer terribly, if they mix in public duties and political struggles ; history is against it ; the manly character of the state would be weakened by the admixture of feminine weakness and susceptibility ; lastly, political struggles would become more passionate and less amenable to the guidance of reason.

Though women are up till now excluded from a direct share in public affairs, their indirect influence on the public welfare is immense. "More patient than man, she can help him to bear suffering without being humiliated by it ; her devotion rouses him to sacrifice himself for his country, and her admiration of his courage incites him to deserve it." (Bluntschli, p. 208).

The political rights of women form still the subject of much discussion. In the U. S. A. full suffrage has been granted to women in some states both for local and state elections. In Europe as yet women cannot vote at Parliamentary elections but can do so in local elections. Women are granted full suffrage in New Zealand and in the states of Australia. A party of women, in England, called the "suffragetes" committed unlawful excesses in their agitations to get full suffrage for women but with no good result.

Women are excluded as unfit to vote and the Negroes were also at first excluded on the same ground. But recently the negroes were given in southern states of America the power to vote. It is sometimes asked are not educated English women better qualified than these negroes ?

§ 7.—City States.

City states are a distinctive feature of ancient Greece where until the rise of Macedon the tendency was to create small

§ 8. Mixed form of State.

Some writers including Aristotle himself favour the idea that there is a fourth form of state—the so-called mixed form of state—in addition to Monarchy, Aristocarcy and Democracy. By a mixed state is meant that in any given state, Monarchy, or Aristocracy or Democracy, may be supreme, but this supreme one is tempered by the presence of the others. For example monarchy may be tempered either by aristocracy or democracy or by both.

Bluntschli very properly condemns the notion that there is a mixed form of state, affirming that one of the elements in what appears as the mixed form always holds the balance of power, and the other elements are really but limitations upon it.

But the true reason for the rejection of the mixed form from the classification of states is that the *state is and must be a unit.* Its essence as sovereignty demands this. Upon a careful examination of the so-called mixed state, it will be found either that no one of the elements, nor any combination of the elements, is the state, or that one of them is the state and the others are parts of the government. The state is supreme with unlimited power and to say that the controlling element is limited by other elements is equivalent to say that ultimate sovereignty is limited which it is not, for the element that can put limitations upon other elements, will become the sovereign element, and the other elements only subservient to it. Hence there is no such form of state as the *mixed form.*

§ 9. The Composite or compound form of the State.

By the word composite, Bluntschli means not a mixture of Monarchy, Artstocracy and Democracy in one single state,

but a state consisting of parts which are also states or organised like states. It is a form of state in which the sovereignty is divided between the *union* and the states forming the same. In composite states it is possible that the constitutions of the parts may be very different from one another especially is this likely to happen if there is difference of race or nationality between the various parts Among such composite states we may notice the following forms :--

(i) A chief state ruling over subject dependencies.

(ii) The Protectorate of a chief state over smaller state *e.g.*, The Turkish Empire.

(iii) The mother country and her colonies. A full discussion of the relation between the mother country and the colonies will be found at the end of this chapter.

(iv) **A confederation**—In this the *connected* states have full dignity and independence except in special circumstances when joint action is necessary.

There is no permanent central Government, no organs for continuous legislation, Government, and jurisdiction. There is only a central Committee or Board, which meets and acts when occasion requires it. 'A confederacy' says Prof. Leacock, 'is not a single state. It is a collection of independent sovereign bodies united on stated terms for certain purposes. Each of them is, legally, free to withdraw from the confederacy when it pleases. A confederacy cannot, therefore, be permanent and indissolvable'. The most prominent example of a confederation in ancient times was the celebrated Achaean League. In modern times we have had the early Swiss confederation, the several German confederacies *etc.* They were composed of states, which were practically all independent. Sovereignty remained unimpaired with the component states The members of the confederacy did not *unite* ; they simply *agreed, as equals, to act in concert* touching certain matters of common interest.

(v) **A Federation or a Federal State** is a single state. It is not a mere relationship existing between separate states. In this the collective Government has a complete organisation. 'Confederation and federal state have this peculiarity in common, that they are both constituted by the association, of distinct independent states : but under a confederation these states practically remain distinct and independent, while within a federal state they are practically welded together into a single state, such a federal union becomes legally indissolvable except by *constitutional amending process.*

Woodrow Wilson mentions the following distinguishing features of the federal state : (*a*) A Permanent surrender on the part of the constituent states of their right to act independently of each other in matters which touch the common interest, and the consequent fusion of these communities, in respect of these matters, into what is practically a single state. (*b*) The Federal state possesses a special body of federal law and a special federal jurisprudence in which is expressed the national authority of the compound state. This is not a law *agreed* to by the constituent communities but it is the spoken will of the new community, the union. (*c*) There results a new conception of sovereignty. The functions of political authority are divided. In certain spheres of action the federal Government stands as the supreme head and the ultimate authority *e.g., in the conduct of war and defence, the control of foreign affairs and the power to raise money* (and without these three functions no federal state can exist). In other spheres of action the constituent states still act with the full autonomy of independent states. The powers possessed by these component states are independent and self-sufficient neither given nor subject to be taken away, by the federal Government.

It is important to notice that all modern federal states have *written constitutions.* the reason being that delicate

co-ordinate rights and functions as are characteristics of federalism must be carefully defined, each set of authorities must have its definite commission.

We have seen before that one of the most notable features of Political Evolution has been the increasing size of the territory brought into a single state. Two different processes can increase the territory of a state—the one is conquest and the other is the principle of deliberate federal union whereby a basis of compromise is afforded, permitting the political junction of previous states which are too closely connected by situation, language, and customs to remain apart, but which are too unlike in area, local customs *etc.*, to permit of complete amalgamation."

This principle of federation played a prominent part in the development of modern states. This principle underlies the formation of the United States of America and the German Empire. This principle and not that of conquest is likely to be followed in future because this federal principle secures union of different states without sacrificing the individual life and political susceptibilities of the component parts. If in any distant future the 'Universal State' be a reality, it will be effected through this process.

It is an important point to notice that from the history of modern federal states it is plain that the 'strong tendency of such organisation is towards the transmutation of the federal into a unitary state. After the union is once firmly established, not in the *interest* only but also in the *affections* of the people, the drift would seem to be in all cases towards consolidation.' Reasons for this tendency to entrust the central government with a wider sphere of authority are not far to seek. Different states merge their jealousies and self-interests into the 'wider outlook that accompanies a large national life.' Economic barriers have been broken down by the rapid means of

communication, exchange of goods *etc.* Political as well as industrial amalgamation has been brought about.

The Colonies—Of ancient times present a sharp contrast to the modern Colonies. Grecian colonies were private enterprises, resulting from various causes such as redundant population, political dissensions at home, love of foreign travels, prospects of trade with foreigners, and the colonies were, to all intents and purposes, independent. The relation was one of filial affection and respect. The Roman colonies were state-colonies within the territories of the state and their functions were simply to Romanise the people. Towards the end of the middle ages great geographical discoveries were made due to the Renaissance movement and the invention of mariner's compass and as a result attempts at colonization were made first by the Spaniards and the Portuguese and then by the Dutch and subsequently by the French and the English.

The Spanish and the Portuguese Colonial system was extremely selfish. The colonial establishments were regarded solely as a source of profit to the conquerors without any due regard to the self-government or liberty of trade. The result of this short-sighted policy was that the Spanish colonies revolted from the mother countries and became independent.

The English Colonial policy of the 18th century was also selfish—the resources, trade *etc*, of the Colonies should be employed to enrich the mother country. But the French were more judicious than the English and followed a disinterested policy with regard to their Colonies. But fortune was against them. The English could build a Colonial Empire whereas the French failed to do so. The interested policy of the English with regard to their Colonies lost them America. From after that time this policy has been changed. Self-Government were bestowed on communities capable managing their own affairs without any reservation of powers on the

part of England with regard to tariff questions and the questions of imperial defence.

The principles adopted now in the administration of Colonies are these. The government adopted in each Colony must be in harmony with the historical, geographical, social, racial conditions *etc.*, of that Colony. Full autonomy to some Colonies and partial self-government such as Municipal Government to others is the rule. But the crown retains in each case certain power of control,—the Governor, the Executive head of the colony *etc.*, are directly appointed by the crown; the crown reserves a veto upon all colonial legislation; the judicial committee of the Privy council is the final court of appeal for Colonial cases.

Imperial Federation—The *indifference* of England towards the large self-governing Colonies as to their political future that was current half a century ago has been replaced by an almost universal *desire to draw closer the bonds* that connect England with her self-governing Colonies. Reasons for such a desire are not far to seek. Increasing *population* and the *economic progress* of these Colonies add much weight to their importance. Fifty years ago the ideal as to the future political destiny of these Colonies *was independence*. But the desire for a closer union has thrown this ideal into the background. Another cause of this strong desire for union is found in England's *dependence on other countries for food*. She has ceased to be self-sustaining. *The increasing size and importance of foreign powers has also* caused or threatens to cause England to adopt an *imperial plan to make herself strong and* influential among the states of the world. The *vast increase in the armaments of European* countries has forced England to assume *a burden to* which she thinks her self-governing Colonies also should contribute as they equally participate in the benefit resulted therefrom. Lastly, the desire for federation has

been hastened by the *success of the federal* Government in the United States America, Germany, Switzerland *etc.*

It may be noticed that only the self-governing Colonies are under our observation. Dependencies (*e. g.*, India) and the crown colonies are not involved here.

The existing connection between the self-governing Colonies and England is that of common citizenship and a naval protection on the part of England to which the colonies make only a trifling contribution. But the imperative needs of *strong* imperial defence force England to maintain a sufficient navy the heavy burden of which makes her want the Colonies to bear their share and this cannot be done without giving these Colonies some voice in the matter.

Steps towards a closer union—England desires a closer political and financial connection, the Colonies are interested mainly a strengthening commercial relations. Much advance has been made in this direction. Steamship lines and submarine cables have been promoted, a *general* penny postage has been established, and preferential tariffs have been enacted by almost all the self-governing Colonies.

But the only important steps towards a closer *political* connection have been the recent Imperial Conferences held every four years in which the English Prime Minister and the Colonial Secretary and the Premiers and other delegates of the self-governing Colonies meet and consult. But it is still a *Congress of diplomats* rather than an organ of Government.

Geographical reasons forbid a '*complete amalgamation*.' The idea therefore of an Imperial Federation of all the self-governing Colonies has been put forward by influential men. But there are grave difficulties in framing Federal Authority. *Direct representation* from the Colonies to the present Parliament of Britian is not, first of all, an easy task. Again to admit Colonial members to Parliament *for all purposes* is to

put England in an awkward position for measures relating solely to England will then be discussed and decided by Colonial representatives. To admit them for *imperial purposes alone* would mean change of ministry very frequently because the ministry might have majority to-day, lose it to-morrow due to the fact that representatives from different Colonies are not of one mind nor do they represent the interests of one country. Hence there ought *to be a separate Federal Parliament* composed of representatives from different Colonies as well as from England. Here also we meet with difficulties. There may be a dispute as to the location of this Parliament. Then again, the Parliament of England would become a subordinate legislature. The result will be that the foreign relations of the Empire might be conducted by men who were not in accord with the English ministers. Hence there are numerous obstacles to this plan of Imperial Federation. Question of revenue also stands an obstacle to this idea.

CHAPTER IX.

End of the State.

IS the state an end in itself or only a means? *The ancient view was*, of course, that *the state was an end* in itself, and that the individual could demand no rights independently of this end. Everything existed for the State. All individual efforts were directed towards the welfare of the State. The individual had no separate existence apart from the State He was a fraction of the state. In modern times there has been a reaction in the opposite direction from after the time of Rousseau who wrote "the public safety is nothing unless the individuals enjoy security." *The State, according to the modern view*, would be simply *a means of securing individual welfare.* In the words of Macaulay 'Societies and laws exist only for the object of increasing the sum of private happiness.' The State is a mere institution having for its end the welfare of individuals.

The best way is to combine both views. Just as a picture may be both an end in itself and also a means towards the livelihood of the artist, so a state may be an end in itself and at the same time a means towards the happiness of the individuals composing it. We must not lose the State in the individuals neither must we sacrifice the individuals to it. Various false and inadequate views of the end of the state have been held: (i) the State exists for the sake of the ruling power. This theory supports much despotism and oppression. (ii) The state exists simply to carry out God's will. Though every state is contributing to God's purpose for the world, it cannot be argued that any actual form of Government is the immediate

expression of the will of God. If it were so, each country would blindly adhere to the form of its own Government. (iii) It is sometimes stated that Morality is the end of the state. But we have seen that spheres of Ethics and of politics are distinct. Morality is internal whereas Politics is external. Legal requirements may be definitely formulated whereas moral rules must be left vague. (iv) Sometimes it is said that general happiness is the end of the state. But is not happiness in a great measure independent of State action ? Can we make a man happy by an Act of Parliament ? Happiness comes from spiritual sources which the state cannot touch. (v) The end of State, according to Aristotle, is public welfare and it seems sufficiently comprehensive. Respect for law and order is encouraged and public spirit is maintained. Sidgwick prefers this end to any other. Bluntschli says the end is "the development of national capacities, the perfecting of the national life and finally its completion."

We may call Bluntschli's theory, the *nationalistic theory of the state.* He says just as the lifetask of every individual is to develop his capacity and manifest his essence, so the state-person should try to develop the latent powers of the nation and manifest its capabilities.

According to his theory the *state is the individual writ large,* that is to say, the state is a person on a large scale. Now we saw that J. S. Mill was rather wrong in his statement that individuality may develop singly and alone without coming in contact with other individualities. Similarly it would be wrong to think that *national individuality* may develop singly and selfishly. If a state is to be regarded as a person it must develop like a person among others. Hence Bluntschli's *nationalistic view* of the end of the state is inadequate.

Writers are not unanimous on the purpose and aims of the state. Von Holtzendorff, who made the most elaborate and

advanced treatment of the subject, held that the state has a triple end. The first is *power*. The State must constitute itself in sufficient power to preserve its existence and position against other states, and its authority over all individuals and associations of individuals within itself. The second is *individual liberty*. The state must mark out a sphere of free action for the individual and must protect it against encroachment on the part of its own government and other individuals. The third is *general welfare*, which the state must secure by maintaining peace and order and by aiding and educating its subjects. Thus Von Holtzendorff loses sight of the ultimate end of the state in contemplating the 3 immediate ends, which considered from the standpoint of the ultimate end, are nothing but means. On the other hand, Hegel, in considering that 'morality is the end of the state' seems to lose sight of the proximate ends in the ultimate end.

The best way of realising the true ends of the state is to distinguish between the *ultimate* and the *immediate ends* of the state. Prof. Burgess makes this distinction and says, 'the ultimate end is the perfection of humantiy—the civilization of the world.' In a universal world-state, human reason, perfectly developed, would attain to universal command. This end is wholly spiritual, and corresponds to Hegel's morality. This end cannot be attained to without the help of the proximate or immediate ends of the state.

It will be many centuries before the whole of mankind can be organised as members of a *world-state*. Mankind must first be organised politically by portions, before it can be organised as a whole. *National states* must be developed everywhere before the world-state can appear. It is within the *national states* that citizens should be trained so as to become members of that higher organisation, the world-state. What Bluntschli means by saying 'that the end of the state is the

development of the *popular genius*, the perfection of the popular life, is this secondary end of the state according to Prof. Burgess. 'The primary or proximate end of the state,' says Prof. Burgess, is government and liberty'. 'The state must maintain peace and law, even if in doing so it crushes both individual freedom and national genius. But as soon as the disposition to obey law and observe order is established, the state must allow a sphere of individual liberty and gradually widen it as civilization advances. We may put the views of Prof. Burgess as follows : 'The **primary end** of the state is *government and liberty*. First of all the state must establish the reign of peace and of law. This is the first step out of barbarism ; and when it shall have been substantially taken, and law and order established, the state must mark out a sphere of individual autonomy. The **Secondary end** of the state is the working out of the *national civilization* and the development of national genius for which national states are the best instruments. The **ultimate nd** is the civilization of the world—the perfecting of humanity.

CHAPTER X.

Structure or Organisation of the Government.

IT means the arrangement for the practical administration of a state and the functions of the different sections into which the government of a country is divided. We shall here consider not the structure of any *particular* government but the *structure of government in general.* Every government has to perform duties of a diverse character. These various functions which the government is called upon to perform are best divided between the Legislative, Executive and Judicial bodies.

Since the time of Aristotle the main functions which have been kept in view in considering the structure of the state have been three, *viz.*—the Legislative (called by Aristotle deliberative), the Executive and the Judicial. These are founded upon the natural requirements which become evident in any act of government. For example, in any case of civil transgression there must be first of all a law in relation to which the transgression may be estimated. Then there will be a process of judgment as to whether the law has been actually broken or not. Finally, if it is decided that the law has been broken, there will be the necessity of carrying out some adequate punishment. In these considerations we have the germ of the three functions though not, of course, an adequate description of them.

Some have tried to describe the relation of the three powers to one another by means of a logical syllogism. The Legisla-

tive power determines the rule or the *major premis* ; the Judicial power subsumes a particular case under it ; and the Executive power carries out the conclusion. This is of course an extremely artificial description.

We may then accept the fact that these 3 powers are necessary in a State.

Separation of the three powers :—In primitive communities these three functions are often performed by the same person or persons. But it is obvious that this will often lead to tyranny. If the king, for example, has the power at once to make the laws and carry them out, there is no security against the most arbitrary injustice. The classical quotation on this subject is from Montesquieu.

"If Legislative and Executive powers are united in the person or even in the same body of magistrates, there is no liberty, because people are afraid that the monarch or the senate may make tyrannical laws in order to administer them tyrannically. There is no liberty, again, if the Judicial power is not separate from the Legislature and the Executive. If it is joined to the Legislature, the life and death of the citizens may be arbitrarily disposed of, for the judge would be the legislator. If it be joined to the executive power, the judge may have the force of an oppressor."

The Legislative and the Executive powers should not be combined because on the one hand the Legislature being a large and representative body is not fitted for the rapid and decisive action which is often demanded of the Executive ; and on the other hand, the Executive, especially in its dealings with the liberties of individuals, needs to be restrained within the limits of law.

The Legislative and the Judicial functions should not be united because this would weaken the distinction between law as it is and law as it ought to be. In other words, the judge

would feel his liberty to decide every particular case according to his opinion as to what ought to be the law upon the subject. Further, the judicial function requires special training and knowledge of law which is not required for Legislation.

The Executive and the Judicial functions should not be united because this would weaken the restraints upon the executive officials. There must be an independent tribunal by which it may be decided whether the official has been acting within his rights or not.

Generally speaking, we may say that the reasons for separation are two : *First*, negative ;—namely, avoidance of tyranny ; *Second*, positive ;—namely, greater efficiency arising from division of labour,

Combination of Functions :—This separation of function must not be carried so far as to destroy the unity of the state. We must not think that it is advisable to set up three independent powers in the state. *There is a general relation between the three powers and the Legislature may be said to exercise a kind of general control.*

Legislation and administration ought to go hand in hand. Laws must receive the test of their wisdom at the hands of administration ; the administration must take its energy and its policy from legislation. The vital connection between the two is well illustrated in the matter of money appropriation for the support of administration. Legislators hold the purse-strings of the nation : only with their consent can taxes be raised. But the administrators require money for their work and hence they are dependent upon the Legislature. The administrators must explain the necessity for money asked before the Legislature grants it. Hence there should be a perfect understanding between the Executive and the Legislature.

Further, the three powers interact with one another as regards their functions. The Legislature exercises executive

powers in as much as the members of the executive must approve their actions to the Legislature and must act within the limits of law laid down by the Legislature. Again, though the Legislature does not, as a rule, deal in an official manner with individual cases, yet there are certain exceptional cases in which the individual cases have to be dealt with by the Legislature. It seems advisable that judicial proceedings against highly placed members of the executive or the judicature should be undertaken by the Legislature.

The Executive often performs legislative functions in as much as it has a considerable amount to do in guiding the general business of the Legislature and determining what matters shall be discussed. Further, it has to lay down laws for the conduct of its own officials. It also exercises judical functions when it decides whether its own officials have been guilty of misconduct and what penalty should be assigned to them if they have been found guilty in this way. In regard to minor matters it is often extremely difficult to distinguish between the executive and the judicial functions.

The Judicature exercises legislative functions in as much as a great deal of law is founded upon precedent *i e.*, the decisions of judges in previous similar cases acquire the dignity of law. The judge thus becomes not only the interpreter of law but the maker of it. Again, the Judicature sometimes exercises executive functions in as much as the judge is sometimes guided by expediency rather than by strict law just as the members of the executive are. Further, he often issues orders for the arrangement of business, methods of investigation *etc.*, which are of a distinctly executive character.

The Legislature is, as a rule, a representative body. This fact of representation gives the legislators a keen concern in the interests of the people for whom they have to legislate. As its name implies, the *Legislature is entrusted with* (*a*) *the*

duty of making and altering laws. It will ultimately base these laws on the will of the people and will interpret the national wishes in which that will has been expressed. For legislation which does not command the moral assent of the people is foredoomed to failure and the passive resistance of large bodies of the citizens can make legislation null and void. (*b*) It will to a certain extent, codify and arrange existing laws. In most states it may not do this in a systematic manner. It will gradually build up the code of laws by means of statutes which have been framed to meet particular emergencies or to remedy special grievances. (*c*) It will also have control of the money required for carrying on the work of Government *i. e.*, it will have the power of taxation. There are reasons why this power of taxation should not be given to the Executive and it is fitting that the power should be exercised by the legislative body. This body as we have seen is representative and therefore will not be likely to contradict very seriously the wishes of the nation in regard to expenditure. Further legislation and fresh expenditure are often very intimately connected. It exercises many powers not purely legislative *e.g.*, deciding contested elections, appointing officials *etc.*

The Legislature is in a way superior to the other two organs of state, since it belongs to the Legislature to lay down general rules which the Judicature has to apply and in conformity to which the Executive has to work, or as Bluntschli puts it—all other functions belong to particular organs but legislation to the whole body-politic. Legislation arranges the permanent relations of the state as a whole.

The Legislature being primarily a deliberative body must as a rule, consist of many persons representing various interests. To avoid rash, hasty legislation the device of a cumbrous Parliamentary procedure (such as three separate 'reading' of a bill; the Legislature divided into a series of Committees *etc.*) in

which an *opposition* can postpone decision by endless debate to force the majority to make concession to *their* views, has been adopted by all the chief Legislatures of the world.

Utility of two Houses.—The division of the Legislature into two houses has been accepted as a principle, as it secures a due amount of caution and reflection in the work of legislation. Prof. Leacock says, "A single legislative house, unchecked by the revising power of another chamber associated with it, proves itself rash and irresponsible; it is too much exposed to the influence of oratory; it is liable to a sudden access of extravagance or of retrenchment. Elected (in most cases) all at the same time, its members represent the opinions of the community at a particular moment and on particular issues. But the lapse of time and the appearance of new public questions may render a legislature such as this, quite out of harmony with public opinion long before its term has expired.

Serious objections against a unicameral system we find in the words of the historian Lecky, "I do not know of any government which is likely to be worse than the government of a single omnipotent democratic chamber." In the words of Prof. Bagehot—the upper house is a revising body. The upper house, being a permanent, hereditary body, (in England at least) is well adapted to check any hasty or revolutionary impulse of the time in the lower house. The inevitable healthy rivalry between the two Houses is sure to cause each to subject the measures of the other to careful scrutiny. But the disadvantage of the bicameral system is given by Amos in his 'Science of Politics' p. 245. "A common discussion

Leacock, *Elements of Political Science*, p. 161.

in one broadly representative chamber must surpass in value any series of discussions conducted first by persons having exclusively one order of interests and afterwards by those having another order."

Composition of the two Houses—The members of the upper house hold their tenure of office in some countries by hereditary principle, in others by indirect election or nomination. The hereditary principle, if it does not already prevail in a community, will not be deliberately brought into operation in the composition of the upper house. The British House of Lords is to a great extent based on the hereditary principle. The Senate of Italy consists of members who are appointed by the executive government. The system of appointment in as much as it secures the services of the ablest and most upright men of the country is now-a-days preferred to the other two systems of election and hereditary principle. The direct election of members for the lower house is the general principle in vogue in all countries.

Relative powers of the two Houses:—*In theory* the two houses are *in almost all matters of legislation*, equal and co-ordinate ; either house being entitled to originate a bill which in order to become a law, must get the consent of the other house. But the lower house only can originate bills referring to the raising and spending of money, the powers of the upper house in these matters being more or less limited. Administration cannot go on without money. Hence with regard to financial questions it seems reasonable that the wishes of the one or the other house should be made more or less decisive. And it is proper that this power should be given to the lower house the members of which are directly elected by the people and are best suited to look after the interests of the people whom they represent. Even in other matters of legislation *in practice*, the lower house has predominent influence in as

ch as the upper house has ultimately to give way to the hes of the lower house.

Direct Legislation – Elsewhere we have described that the wing distrust of representative Legislatures led the people adopt the system of *direct legislation*. In some democracies g., Switzerland) certain functions in direct interference are reserved to the people, such as the submission of the laws to the vote of the people (*i.e.*. Referendum), the right of the people to introduce laws by petition (*e.g.*, Initiative) etc. This tem is growing in favour at the present time, the representative Legislatures abusing the power delegated to them.

But we should remember "that making of laws requires a ecial training and experience, and that the interests of the ople are really safer in the hands of carefully chosen legislares then when submitted to the hazards of a popular vote."

Executive—The executive is concerned with *action* more than *deliberation*. As promptness of decision and singleness of purpose are essentially necessary in the executive, the chief officers of the Executive are few as compared with the members of the Legislature.

The term **Executive** means those officers of the government, by whom the decisions and regulations of the Legislature are put into practice. It is not, however, to be regarded as a mere committee of the legislature. It is usually a semi-independent body, to which the legislature has delegated a considerable amount of power, and over which the Legislature exercises only a *general* control. Thus the Executive implies two things : (*a*) that there is a body of general principles either prescribed by law or understood in practice on which the Executive proceeds to act : (*b*) that the executive or administrative authority has ample discretionary power within the limits of those general principles of legislation to manage the affairs of the country without detriment to its interests. This discretionary power

i. e., the power which is reserved to the executive to be exercised according to peculiarity of circumstances, is exercisec with regard to foreign relations such as declaring war, making treaties *etc.*, for which the Legislature cannot make permanent provisions. But in the narrow sense it often means the supreme head of the administration such as the President (of U. S. A.) together with his chief subordinates. In what follows we shall speak of the Executive in the narrow sense of the term.

The Executive in complex and highly organised societies consists of a number of departments manned by experts. To each department is entrusted a definite section of the nation's business and the head of the department is a member of the Cabinet or the Government. Now these members of the Cabinet or ministers as they are called, must have in every country some supreme leader to guide them, otherwise they are apt to be without energy or success in policy, if not actually at odds with each other.

The supreme head of the Executive may be either *hereditary or elective.* In England the sovereign who *in theory* the supreme head of the Executive enjoys a life tenure and this tenure passes to his heirs. In *practice* however, the supreme executive function is discharged by the Prime Minister who is almost omnipotent within the limits of the constitution In Germany also the sovereign is the head of the Executive. His own will or that of the vice-gerent Chancellor is the real centre and source of policy, and the heads of department *i. e.*, the ministers carry out that will in practice. Thus in England and Germany the Executive headship is hereditary,—in one case it is only nominal and formal and in the other case it is real.

In France and America the Executve headship is elective. In both countries the elected presidents are the executive heads

of the Government. But in the case of America the President is in a very *real sense* head of the Executive. In France the headship is nominal as we shall see afterwards. Thus we see that in the above four countries the ministers or heads of departments along with the supreme head whose power is either real or nominal, form the Executive.

The subordinate members of each department are selected by the higher or leading members of the department. The Executive authority has a large discretionary power and they must be trusted to manage the affairs of their departments even without instructions from Parliament. But in the interests of a country it is desirable that the heads of the departments should be co-ordinated in some common council. Obviously the head of a department is more or less temporary as his tenure depends on the life of his political party but the rests of the department is permanent. These subordinates who are permanent have certain conditions of appointment (*e. g.*, competitive examination) but the dismissal from office of any subordinate is regarded as an exceptional measure to be justified only by extreme necessity. Even the heads of departments are not sure of their positions. Political considerations may lead to their resignation or compulsory retirement at any time.

Relation existing between the Executive and the Legislature in England, France, America and Germany—We have seen that the Executive and Legislature should go hand in hand, that is to say, there must be some relation between the Legislature and the Executive, for the power of making laws resides with the Legislature but the laws are carried out by the Executive. The simplest relation between the two could be the appointment of the Executive by the Legislature. But we shall see that this is not the case with all the four states *viz.*, England, France, Germany, and the

United States of America. In England and France the Government is *Parliamentary* that is to say, the Executive is *responsible* to the Legislature and the tenure of office of the Executive is dependent on the will of the Legislature. But though both these Governments are Parliamentary, a gulf of difference between the cabinet or *ministerial responsibility to the legislature* existing in France and that which exists in England. In England, the members of the cabinet must be members of the Legislature, either of the Lords or of the Commons. They are nominated by the crown on the advice of the leader of the Political party which has a majority in the House of Commons and this leader becomes the Prime Minister. The members must all belong to this dominant party. As long as they enjoy the confidence of the House they continue in office and they are little interfered with by Parliament, but if any of their important measures be not approved of by the majority in the House of Commons, they resign in a body. While the Cabinet is thus directly under the control of Parliament, it at the same time shares the power and sovereignty of Parliament. The Executive is trusted to carry out the general instruction of Parliament at their *own discretion*. In matters of finance Parliament conrols the Cabinet but the Cabinet takes the initiative in matters of administration and suggests legislation. The Cabinet also dissolves the Parliament although technically it is the Sovereign who does so on the advice of the Cabinet. The Cabinet really declares war, although technically the king declares it. Hence the saying—*In England the Executive has power over Parliament rather than the Parliament has power over the Executive*. They have *complete leadership* because of their *complete responsibility* to Parliament.

In England the ministerial responsibility rests on custom and not on law. In France, on the contrary, the ministerial responsibility rests on law. "The ministers are collectively

responsible to the chambers for the general policy of the Government." Their tenure of office is dependent upon the favour of the Houses. No policy of theirs could succeed without legislative approval and support, and when defeated on any measure they resign as in England. This is not all. The ministers are also subject to the control of the chambers through *questions* and *interpellations*, the latter of which means "a special and formal challenge of the policy of the cabinet upon some current question and is usually the occasion of a general debate" The ministers are, therefore, hardly more than nominal leaders of the chamber, holding their authority for brief periods and upon a very precarious tenure. The chamber treats them as if they were still the appointees of a monarch, instead of its own representatives, and is jealous and suspicious of them at every turn. Hence Woodrow Wilson says, "in France the ministers have partial leadership (financial matters being excluded) with entire responsibility."

In America and Germany the Government is non-Parliamentary that is, the tenure of office of the Executive is independent of the will of the Legislature. In America the presidential system gives the President aristocratic power. He chooses his own cabinet. He has the right of vetoing legislation passed against him, unless it has $\frac{2}{3}$ majority. "He is elected independently of the Legislature. The Legislature cannot shorten his term in office, neither can dictate to him the political or administrative policy to be followed. He is not bound to consult the wishes of the Legislature in selecting his cabinet. The cabinet ministers cannot be dismissed by the Legislature except by impeachment. The Executive is thus quite independent of the Legislature except in financial control" Practically the American Executive has subordinated the Legislature so that it is a *recording* and *debating institution*, rather than an *effective controlling* Legislature. *The American form of*

Government is not Parliamentary but cabinet. In America the cabinet ministers need not be members of the Legislature, but in England they must be.

In Germany the Emperor has power to compel the cabinet to do his will. He appoints the Imperial Chancellor who holds office during the pleasure of the Emperor. There is no power on the part of the Legislature to force the resignation of the Chancellor.

The Judiciary—The function of Judicature is mainly to apply the law to particular cases except in instances where there is no strict law to meet a case and where, therefore, principles of general equity may be followed. The Judicature is strictly bound by the law. No judge is at liberty to alter a law to suit himself. His duty is simply to *interpret* what the law is and whether it may probably be applied to the case before him. He has also to determine the amount of damages which may be awarded or the penalty which has been incurred. "Judicial decisions contain a constructive element and serve to expand the existing law into a more and more detailed interpretation." Where the law is not explicit the judge makes it so.

Woodrow Wilson describes the judge "as the authoritative voice of the community in giving special application to its law." The functions of judging are usually assigned to trained lawyers appointed by the Government. The Judiciary must be separated from the Legislature and the Executive in every organised state, for its functions require independence and impartiality as well as expert knowledge.

In order to secure the independence of the Bench, the Executive should not have the power of dismissing judges. Again, judges should not be appointed by the Legislature which has not sufficient knowledge, nor by popular election which would be quite unsuitable, but by some authority whose legal attainments are unquestioned and whose judgments would not

be biased by political considerations. The decision of cases is not always left to legal experts. It is the practice especially in criminal cases, to associate with the judge a body of men of ordinary common sense who give the verdict, the reason being that the *point of view of common sense* should be taken account of.

Sidgwick sums up the main functions of the three powers : "The business of the Legislature should be mainly to codify the general rules of law and determine taxation ; the business of the judicature is mainly the judicial application of the law to individual cases ; and the business of the Executive all else that has to be done in order *to carry laws into effect* ; and we may say that while judicial decision will almost *entirely* relate to questions of strict right and duty, executive decisions will be *largely* determined by considerations of particular expediency, which will but rarely enter into judicial reasonings."

CHAPTER XI.

The Province of Government.

INDIVIDUALISTIC Theory—The question naturally arises what is to be the proper sphere of Governmental operations for the general benefit. To indicate the present subject we are dealing with, a variety of phrases are employed such as 'Sphere of the State,' 'State interference,' 'State Control,' 'the Functions of Government' 'the Province of Government' *etc.* Different theories have been put forward as a solution of this open question of Government control. The two principal theories are the Individualistic and the Socialistic theory. The sum and substance of the former theory is that the sole duty of government is to protect the individual from violence or fraud. The state exists simply to protect the *life, liberty* and *property* of the individual. It is what the Germans call 'legal state.' According to this theory the positive interference of the state with the individual even in his own interest is not justified. It is held that even with the best of intentions such interference can lead only to evil. The *liberty* of the individual must not in any way be restricted. Besides this Civil freedom there should be economic freedom, that is to say, the 'state should neither undertake operations of an economic character, nor should impose restrictions on the economic activities of its citizens.' This theory of Individualism as we have already described, has been supported from different standpoints. Some writers hold that *natural justice* demands this abstention from state interference. As a matter of justice, the individual has a right to be let alone. According to these writers the active interference of Government can have only a detrimental

effect. Hence the 'State is to abstain from all solicitude for positive welfare, and not to proceed a step further than is necessary for mutual security and protection from foreign enemies.' This theory of non-interference became especially prominent when the doctrine of Popular Sovereignty found favour with the people.

Some writers hold that the individual should be let alone *on economic grounds*. The doctrine of Laissez Faire is that the state action with regard to the individual should be reduced to a minimum. There should be no hindrance to economic competition. The individual should be left free to pursue his own course and plan. There are many things with which state action cannot deal and therefore it should not attempt to deal with them. If the argument is that the state interferes only with a view to the welfare of the individual, it may be replied that every one is the best judge of his own interests, and that his faculties for looking after himself will be better developed, if the state does not do too much for him.

This theory of individual liberty against the interference of government narrows too much the sphere of public life and leads to a neglect of economic and intellectual interests and also to the weakening of public spirit.

The Socialistic theory—The Socialistic theory is entirely opposed to the individualistic theory. It has many forms such as *State Socialism*, *Communism*, *Collectivism*, but all kinds of Socialists are disciples of Rousseau and agree in this that 'there was a time when all men had equal *natural rights* in the earth and its produce, and that this system of equal rights was the cause of general happiness.' The disorders of modern society and social inequalities are due, according to them, to the fact that the system of *equal rights* has been replaced by the system of *unequal rights*. The rich at present are becoming richer and the poor poorer. The socialists try to prove that

the existing industrial system (whose basis is individualistic) is *wasteful* and *ineffective* from an economic point of view, and offers an *inequitable distribution of remuneration* to the different classes of workers. It is *wasteful* because a great deal of work is unnecessarily duplicated with no corresponding general advantage, *e.g.*, in competitive advertising, which could have been performed with great profit without loss of time or labour by one person or agency. It is *ineffective* because the appropriation of the land by private owners, and the increasing use of machinery practically leave the isolated labourers entirely dependent on the landowners and the capitalists and hence they are compelled to work on low wages. The Socialists hold that such a state of things should not be allowed. The present industrial structure of society should be remodelled on a somewhat different basis.

Private property should not be allowed. Free economic competition should be stopped. In place of the present state there should be a Co-operative Commonwealth in which government management should replace private management. The state should interfere in every department of life for the happiness of the citizens. The whole domain of economic operations should be in the hands of the state. It should regulate taxes, rent, wages *etc*., distribute the produce amongst all the people according to the service they have rendered or according to their needs. Such is the programme of modern socialism (state socialism). But the state cannot, as socialists advocate, look after the entire interests of the individuals.

Functions exercised by modern Governments—we should, therefore, avoid both these extreme views. The state action in modern times is largely determined by the needs of the time and the altered circumstances of present industrial environment. Individualistic theory is still the working basis, but at the same time the socialistic doctrine has to some extent

been adopted by modern states. Abosolute reliance upon the principle of un-restricted competition and individul self-interest has been completely lost and in its place we have an increasing tendency towards state interference with industrial operations such as regulation of railroads, of trusts and monopolies, tariffs, factory legislation *etc.* In the above sense we are all socialists.

Classification of Functions—Willoughby in his 'The nature of the State' (P. 338) divides the functions of government into two groups—(*a*) Essential functions and (*b*) Optional functions. He says "It is admitted by all that the state should possess powers sufficiently extensive for the maintenance of its own continued existence against foreign interference, to provide the means whereby its national life may be preserved and developed, and to maintain internal order, including the protection of life, liberty, and property. These have been designated as the essential functions of the state." Woodrow Wilson calls *these essential functions* the **Constituent functions**—functions that are necessary to the civil organisation of society. He calls the optional functions the **Ministrant functions** of the state—functions, which are undertaken not by way of governing, but by way of advancing the general interests of society—functions which assist without constituting social organisation—functions, which if left to private individuals, will be ill-performed or not performed at all. Under **Ministrant functions**, he mentions the following : (1) Regulation of trade and industry, coinage of money, establishment of standard weights and measure, tariffs *etc.* In these days of sharp competitive industrialism protectionists think that it is impossible that home industries can thrive without state-help. Hence tariff questions are undertaken by the government. (2) The regulation of labour. The extensive use of machinery and the growth of factory system in the 18th century made the employers forget, in their eager for sudden gain, all consider-

ations for labourers, whether childern, women or old men. It is, therefore, advisable that in the interests of the labourers the state should make factory legislation. (3) Maintenance of Posts and telegraphs *etc.*—These enterprises connot be conveniently left to the individual effort. (4) Public works, such as maintenance of thoroughfares, have been undertaken by all states in modern times. (5) Education—In moden times education is looked after by the state in almost all countries, the reason being that it immensely benefits the community and therefore should not be left to the option of the citizens. Maintenance of gas and waterworks, sanitation, care of the poor and incapable, care and cultivation of forests, maintenance of Savings-bank, the insurance of loans to farmers, establishment of agricultural institutes, regulation of trusts and monopoly rates, railroads *etc.*, fall properly under the ministrant functions of the state. No broad lines of demarcation can, however, be laid down between the proper spheres of governmental interference and individual operations. The government should perform those things which cannot properly be left to individual effort. The individuals should perform those actions which in the interests of the citizens as well as the state, it is advisable they should do. The aim of legislation should be to root out the evils and secure public as well as private welfare and not to stifle with the legitimate enterprise of the individual.

CHAPTER XII.

§ 1. Present Constitution of France.

THE present Republic of France began, September 1870 after the fall of Sedan. Republican leaders made a provisional Government called the National Defence. In 1871 a National Assembly was elected with 768 members. A majority was in favour of monarchy but they had divided councils. The one party, the 'Legitimists,' was for the House of Bourbons ; others were for the House of Orleans ; others were for a Napoleonic dynasty. By this three-fold division of Royalists, the Republicans got their way and *France has since been a Republic.* The constitution was experimental and was not settled till 1875. A distinction was made between *Constitutional* and *Organic* laws (passed in 1875) *i.e.*, between laws which could not be changed by the ordinary process of legislation and laws which could be so changed. The election and general powers of the President ; the division of the National Assembly into two houses, a Senate and a Chamber of Deputies ; the general powers and mutual relations of the two Houses, the President's relation to them, and the general rules which should control their assembling and adjournment' are all dealt with by constitutional laws. The constitutional laws were not, however absolutely unchangeable. They could be altered by the comparatively easy method of gathering the two Houses of Parliament together in one National Assembly. Hence only a small part of the Constitution assumed a fixed and rigid form subject to the easy process of revision. French Constitution is a Written Constitution.

The Legislature consists of two Houses :—*(a)* **The chamber of Deputies**—Organic laws provided for the election of Senators and Deputies. One Deputy has been alloted to every 70 thousand inhabitants. Deputies must at least be 25 years of age and their usual term is 4 years. The 86 departments each being entitled to *at least* 3 representatives, are the basis of representation in the Chamber. The Deputies are elected, not 'at large' for the whole Department but by districts—the Arrondissements. This system of voting is known in France as Scrutin d'arrondissements. Principal colonies also send representatives to the Chamber, which consists of 584 members in all. Election to the Chamber is by absolute majority, that is to say, of the two rival candidates in any district, he, who receives an absolute majority of all the votes cast not only, but also at least one-fourth as many votes as there are registered voters in the district, will be elected.

(b) **Senate**—It consists of 300 members chosen by 'electoral colleges' specially constituted for the purpose in the several Departments and Colonies, their term of office being fixed at 9 years. The senators must be at least 40 years of age. In each Department the electoral college is made up of (i) the Deputies from the Departments ; (ii) members of the 'General Council' of the Department ; (iii) and the members of the Councils of its several Arrondissements ; together with delegates from the Communal Council. One-third of the membership of the Senate is renewed every 3 years.

The National Assembly is a joint meeting of the Senate and the Chamber of Deputies. They meet together for 2 purposes : (i) The revision of Constitution. A revision of the Constitution takes place when the two Houses are agreed that revision is necessary. Prior to the revision each House considers separately the propriety of a revision. An absolute

majority vote of the united Chambers is necessary for such a revision.

(ii) The election of the President of the Republic.

The National Assembly meets at Versailles whereas the Houses meet at Paris. The National Assmbly has the Supreme power in the State. It is the most completely sovereign body known to the constitution. In principle, it can control everything, the only restrictions on its power are that it must not sit for more than 5 months and it is forbidden to consider the repeal of the republic (it can however repeal the law which forbids this).

Relative power of the two houses :—Except for money bills the Senate has equal legal powers with the Chamber of Deputies. But the political power of the Chamber of Deputies is much greater. The ministers are responsible only to the Chamber of Deputies. The Senate may be outvoted in the National Assembly by the Chamber of Deputies. The French Constitution lays down—"Finance bills must first be presented to the Chamber of Deputies and voted by them."

The Executive consists of the President and a Cabinet of Ministers.

The President of the Repulic is elected for 7 years by the National Assembly. No member of a family which has ever reigned in France is eligible for election as a president. The president has a very dignified position and lives and travels in a style that is almost regal. He may appoint and remove all officers of the public services. He cannot veto any legislation but may demand reconsideration of any question. He can adjourn the chambers for a period not exceeding 1 month. He may close a regular session of the house after 5 months. He may further, with the consent of the Senate, dissolve the Chamber of Deputies. He may make treaties

with other nations although the more important treaties require ratification.

The president occupies a peculiar position in relation to Parliament and in reality very little power is left to him. He is not indeed responsible to Parliament and so is not compelled to resign if any of his actions should be disapproved of by a majority in the chambers, He is also independent of the fate of any political party or minister. At the same time his acts must be countersigned by a minister. His active powers are therefore exercised by the ministers who are responsible to the Chamber of Deputies. He is not usually present at cabinet councils. He has nominally the power of selecting his own ministers but usually entrusts this power to some one else.

The Ministers usually belong to the dominant party in the Chamber of Deputies. They have the two-fold function of (1) repersenting the Chamber and of (2) connecting the President with that chamber. In the former function, they are known as the *Cabinet.* In the latter function, they have to act as the heads of the administration and are called the *Council of Ministers.* As a cabinet the ministers form an exclusively political body and are in essence the masters of the President. They have the right to attend all sessions of the Chambers and take a specially privileged part in debate. As an administrative Council the ministers are, officially though not really, subordinate to the President, who is the Chief Executive. The Council sits before him under a special 'President of the Council' chosen by the ministers themselves. Its duty is to exercise a general oversight of the administration of the laws. At the same time they exercise a certain amount of control over him. Even his salary is dependent on the budget which the minister of finance has to present to the Chambers.

The Ministerial Responsibility—The ministers are also themselves controlled by the Chamber of Deputies. They come from the majority in the Chambers. Their responsibility to the Chamber is of law and not of custom. Their tenure of office is dependent on the favour of the Houses. The ministers are also subject to the control of the chambers through *questions* and *interpellations* An interpellation is defined by Woodrow Wilson, 'as a special and formal challenge, of the policy of the Cabinet upon some current question and is usually the occasion of a general debate' An adverse vote has led to the resignation of many ministries. Another way of bringing the French ministry to account is by the appointment of a Committee of Investigation. In England also this power of interpellation on the part of the House of Commons exists but in France this power has been abused by the Chamber of Deputies which being an intemperate body, try to make the ministers mere puppets in their own hands. Deputies lie in wait, so to speak, to take the ministry at a disadvantage Ministerial responsibility brings with it complete *ministerial leadership, i.e.*, the Ministers since they are responsible to the legislature, guide and direct the policy of the country. Initiative is taken by the ministers in matters of legislation. This is the case in England. But in France neither in finance nor in other matters, the ministers are the originative leaders. They are completely subservient to the wishes and the whims of the Chamber of Deputies. The Chamber of Deputies govern with or without the leadership of ministers. The ministers are therefore, hardly more than nominally the leaders of the chambers. Incomplete responsibility with partial leadership is the rule with the French ministers.

What is known as *Party Government* is not so well-developed in France as in Britain. Those who seek election to the

Chamber of Deputies do not go to the country as members of a party but rather as individuals. Parties are formed after election. Thus in France when a change of Government occurs there is not a compact opposition party ready to take office. The new Government may indeed contain several members of the old Government. The result of this is that there is not so complete a unity between the various members of the Government in France as in England.

The power of the ministers in relation to the country is enormous. The Government is very paternal in character and is highly centralised. Appointments in all parts of the country are made from the central Government. Further, the ministers and the executive officers are not responsible to the ordinary law-courts. The ordinary law-courts are not held in the same respect in France as they are in Britain and in India. The separation of the Executive and the Judicial function is taken to mean not that the Judicature is independent of the Executive but that the Executive in independent of the Judicature and the Executive officials cannot be controlled by the ordinary law-courts. A distinction is made between public and private law and private law alone comes within the jurisdiction of the ordinary courts. The highest administrative court is known as the *Council of State* consisting entirely of ministers, and it deals with suits affecting administration.

We may refer in passing to what is known as the 'Spoils System' in France. A great many of the officers are in the gift of the ministers, and the political adherents of the ministers naturally look for some appointment as the reward of their support. The result is that a great many of the Government appointments change hands after every election. They are looked upon as the *Spoils* of the victorious party. The result of this is that the holders of these offices have very

little independence and are extremely subservient to their political superior.

Judiciary—The supreme court of France is Cassation Court which sits at Paris. Next below it in rank are 26 courts of appeal. The President or rather the minister of justice appoint the judges who retain office during good behaviour.

In France, the ordinary civil courts are without juries.

Local Government—Everywhere in France the Central Government superintends the local elective bodies.

The Chief division is the *Department.* There are 86 Departments now in France and they are controlled each by a *Prefect* appointed by the President but with responsibility also to his local authorities. He presides over the general council of the Department. he controls the Budget and the Police arrangement.

After the Department comes the *Arrondissement.* These are merely administrative districts.

After the Arrondissement come the *Cantons* which are subdivisions for judicial and military purposes.

Lastly we have the *Commune.* This is the unit of Local Government and is very important. There was 36170 Communes in France. Every city except Paris and Lyon is organised as a commune. The communal council consists of from 16 to 36 members. It elects the Mayor, who when elected becomes the direct representative of the central Government.

A general remark which might be made about the constitution of France is that "it is a transference of the old centralised despotism to a republican mould."

In a genuine Republic the power would lie to a greater extent with the smaller units. The general rule of French administration is centralization, the direct representation of the central authority through appointed officers, in every

grade of Local Government, and the ultimate dependence of all bodies and officers upon the ministers in Paris. This centralisation of power is really an idea borrowed from the old despotic Government to which France had been accustomed for several centuries.

The Principal defect in the French constitution is that the ministers are present in the chambers not as ministers but as ordinary members. They do not lead the House as ministers. They take part in the discussion of the House and give their opinions like ordinary members without exercising influence as ministers.

§ 2—Present German Constitution.

The present German Empire has arisen from the historical events of 1869 and 1870-71. In the former year Prussia inflicted a crushing defeat upon Austria and drove her out of the German confederation. Prussia also added five Provinces to her own territory. The Franco-Prussian war of 1870—1871 added still more to the power of Prussia, with the result that the king of Prussia was crowned emperor of Germany and the other states entered into an union with Prussia which was called a federation but in which Prussia had the preponderating power.

Character of German Empire—The German federation differs from other federations in this that the ruler of the whole is also *territorial sovereign* in one of the sections. This section has more power than all the other sections put together. Nominally however, the king of Prussia is not sovereign of the union. He is its president merely. Only this office is hereditary and belongs incidentally to the king of Prussia. Even if the king of Prussia is only a regent he will be ruler of the Empire. Further, although the office is not nominally or,

formally that of a monarch, yet the Emperor wields in it great power chiefly derived from his predominance as king of Prussia. It is because he is king of Prussia that he is powerful as Emperor and brings to what otherwise might be an empty title a very real authority.

But sovereignty does not lie with him. He is the chief officer of a great political corporation, whose object is an eternal union for protection and welfare of the German people.

The Executive—the Emperor—The Emperor has power to open and close the two Houses of Parliament, the *Bundesrath* and *Reichstag*. He can also dissolve the latter with the consent of the Bundesrath. He appoints the *Imperial Chancellor* who is the centre of all Imperial administration and chairman of the Bundesrath. He controls foreign affairs and all military matters. Woodrow Wilson claims that "within his own dominions the German Emperor is the most powerful monarch of our times."

It is with the Empire as a whole and not with the separate states that the *sovereign* legislative power rests. The Federal Legislation may amend the constitution and change at any time the relation which the several states bear to the whole. At the same time executive matters are largely left to the control of the states subject to certain exceptions. The Empire retains only a general control.

The Bundesrath—The most characteristic part of the constitution is the Bundesrath which has been described as an *assembly of ambassadors from the different states*. With this the nominal sovereign power of the Empire resides and a great part of the real power. The Chancellor is the chairman of it and has a casting vote. The members of the Bundesrath are the agents of their Governments and act under instructions from them though their votes are valid even if they disregard these instructions. The number of votes possessed by the

different states varies with the size of the states. The votes of each state must be cast together as a unit *i.e.*, on any disputed question it is not possible for some of the representatives to vote on one side and others on the other side. Prussia has 17 votes and as no amendment to the constitution can be passed if there are 14 votes against it, it is obvious that Prussia controls any such amendments. In other matters also it is a very rare thing for the other States to be sufficiently united to oppose any policy of Prussia although occasionally this opposition has been effective. Its term of office depends on the discretion of the constituent States. *Its Legislative power*—In Legislation the Bundesrath has very complete power. It *originates legislation* and has the *final decision* upon bills after they have been considered by the Reichstag. The Chancellor who is a Prussian official has the power of *framing* all bills. He can also arrange for the support of these bills in the Reichstag. *Its administrative power*—The Bundesrath takes a general oversight of all the administration of the Empire and helps in the choice of all the important officials. The consent of the Bundesrath is necessary to a declaration of war, and also, to the dissolution of the Reichstag, (during a legislative period). The Bundesrath must also consent to what is called 'federal execution against any state of the Empire'. *Its Judicial function*—Its Judicial functions are extensive, Public law is under its control, and it is the court of highest appeal in all cases where an individual considers that he has not obtained justice in the courts belonging to the different states and also in cases of dispute between the Imperial Government and a state, or between two states.

The Reichstag.—The Reichstag and the Bundesrath do not stand related to one another simply as two Houses of Parliament. The Bundesrath has been described as a court of ambassadors, and its great power has been emphasised. The

power of the Reichstag is subordinate, but still it has a considerable share in legislation. It can also, to a certain extent, control treaties, make inquiries into administration and remonstrate, if displeased. It has to *vote the taxes*, but the annual Budget comes to it with the authority of the Bundesrath, and is very slightly modified by the Reichstag. Further, many of the imperial expenses are not annually fixed, but continue for a number of years. Woodrow Wilson says, "that, Bundesrath governs, and the Reichstag, in a measure, controls."

The Reichstag is representative of the *whole German people* and is elected as follows: There is a representative assigned to every district of 131000 thousand inhabitants. But no electoral district may include territory lying in two different states. There are 397 members, and of these Prussia elect $\frac{3}{5}$ths. Members are elected for 5 years on a basis of universal suffrage and by secret ballot. The age limit is 25 both for electors and elected. An *absolute* majority is required for election. The Reichstag elects its own president, vice-presidents and secretaries. Seeing that the majority of its members are Prussians the strongly military character of Prussia prevails. For the most part, therefore, the Reichstag is conservative and anti-democratic (quite a striking feature).

The Imperial Chancellor—*The Imperial Chancellor is the head of the administration.* He is appointed by the Emperor and removable by him. He stands between the Emperor and the Reichstag. All the criticism is directed against him but an adverse vote does not compel him to resign. All the departments of the administration are subordinate to him, and are really subdivisions of his power. *The Chancellor also superintends the way in which the various states carry out the law, and deals directly with the government of the*

different states upon this matter. The Chancellor is also chairman of the Bundesrath, but in this capacity he is not an imperial official, but a representative of the King of Prussia.

Summary—Generally speaking, the *administration is carried out by the various states but the legislation belongs to the Empire as a whole.* It has also *general* control over weights and measures, Coinage and Railways. The navy belongs to the Empire. But the military forces belong to the different state. In the state armies however, the imperial control is very great. The Emperor is Commander-in-chief and appoints all the highest officers. Certain states as for example, Bavaria, Saxony, have special privileges of independence as regards military matters.

Taxation is mainly arranged by the states. The Empire however, also requires a revenue. This revenue is not raised by means of direct taxation but comes from customs and excise duties and the profits of certain imperial undertakings such as the Post Office and the Imperial Banks *etc.* If revenue from these sources is not enough the different states have to pay a contribution in proportion to their population.

Justice is, as a rule, administered by the state courts but there is also an Imperial court of appeal at Leipzing. The appointment of judges is under the control of the states but imperial laws fix the qualifications of the judges and the organisation of the Courts.

Foreign affairs of the Empire are under the jurisdiction of the imperial government. But the states may have dealings with foreign courts in matters not affecting imperial interests.

§ 3. Present Constitution of the United States.

The United States of America have grown out of the isolated settlements which were planted mainly by the En

th: different parts of the country. These settlements grew p into states extremely jealous of one another and having ight connection with one another. They insisted that if they ere to unite at all, they must unite on a basis of absolute quality with no preponderance of any one state as in Germany. nion was at first considered as a necessary evil with every tempt to minimise the central authority.

The necessities of defence drew these colonies together. 1775 they united, secured their independence from George I and after the Declaration of Independence in 1776 drew p certain articles of *Confederation*. But these articles proved be of little use in binding these states together. Hardly y executive power was given to the federation and when the ecessities of defence became less urgent the States fell apart.

Hence it was apparent that the union must be of a closer nd than had been shown in the Confederation.

A Convention met in 1787 and under the influence of nglish constitutional law the *Present constitution was formed.* provided not for a *Confederation* but for a *Federation* with central government having laws and independent power of its wn. The Constitution was of a *rigid* character and has been ttle changed from that day to this. The Constitution provided or two Houses of Congress the Senate and the House of Representative and also for an independent executive head or President. The Constitution met with opposition at the time f its settlement. Even those who brought about the union ad little love for it and would have preferred a weak central overnment to a strong one. Time, however, worked in favour f the central government. Necessities for strengthening the entral government became apparent. The civil war of 1—65 really completed the union. The social differences, , Slavery, which had separated the Southern States from Northern States, were abolished by the defeat of the

Southern states. These latter gradually become like the rest of the country in character and sentiment and one United Federation became possible.

We should not think, however, that even at the present time the independence of the Separate states has been lost. We should rather look upon the *government as a double one consisting of the United States government and the governments of the particular states.* These states are not merely administrative divisions, they are rather constituent members of a union. At the same time we ought also to emphasize the fact of union. The United States Government and the Governments of the different states are not two separate things. They form part of one system. In the American Constitution the harmony of the independence of each constituent state and the integral nationality of the American people has been preserved and worked out.

The American government is derived to a great extent from the English model.—With certain modifications it was the English common law that was adopted in the United States. Popular conventions took the place of the Privy Council. The powers of the president very closely resemble the powers of the British King of the time of George III. Both have, for example, the power of making treaties with foreign Governments and of actively influencing the Executive Government. The only difference is that the Presidential office is for a limited time and is not hereditary. Probably also the strict separation between the Legislature and the Judicature was due to the state of English politics. The existence of two chambers also in the American Parliament is probably due to English models.

Federal Government.

The Federal Government is made up for the most part of a President and the two Houses of Congress. The relations

of these bodies to each other, to the President and to the Government and the people as a whole, are determined by a *rigid* constitution. It is extremely difficult to change the constitution. Before a change can be made $\frac{2}{3}$rds of the members of each House must agree that a change is necessary; or the Legislatures of two-thirds of the States must petition the Congress to call a general convention. The American constitution differs ftom English constitution in that it is the product of conscious and deliberate constitution-making. The British constitution on the other hand, is the product of slow and unconscious growth and does not even now exist as a formal document.

Federal Executive: The President. *His election*— The President represents the whole nation and consequently his election is a matter of considerble importance. To leave the election to a direct popular vote over the whole country would give rise to a popular excitement; to give it to the congress would not mean that he was really the choice of the Nation. Consequently the choice was made through electors directly chosen by the people and these were equal in number in each state to the number of its representatives in both the Houses of Congress. As a matter of fact, however, the electors do not exercise independent judgment. They are chosen under a pledge to vote for a particular candidate, so that the president is really chosen by popular vote after all. His period of office is limited to four years. Though there is an unwritten rule that the President should not hold office for more than two terms in succession, yet good behaviour during the first term enables the president to be re-elected again. He can be impeached by the House of Representatives and tried by the Senate. The vice-president succeeds the president whenever the office of the latter falls vacant before the expiry of his term.

His powers :—In *foreign affairs* the powers of the President are extensive. While he exercises general control and receives foreign ministers, he cannot make treaties without the consent of two-thirds of the Senate, and the supplies for war must be voted by the House of Representatives With regard to *domestic administration* his powers are very extensive. He is Commander-in-chief of the Army and the Navy. Powers *with regard to appointments* are also great. With the advice and consent of the Senate he can nominate the high Federal Officials. But he is generally free to choose his Cabinet Ministers. Appointments to other offices are made with the approval of the Senators of the President's party, representing the State with which the appointments are connected. The Senators thus obtain a considerable amount of patronage by which they can reward their political followers. It is to be noticed also that new officials are appointed after every change of President so that there are always considerable number of offices to distribute. Appointments thus made by the President under the approval of the Senate are called 'appointments by the courtesy of the Senate' (Cf. 'spoils system') President's *power with regard to legislation* will be seen from the relation between the Executive and Legislature given below.

The President's Cabinet of Ministers has been described as part of himself. They are appointed by him and are responsible to him. He is not simply one of the Cabinet like the British Prime Minister. The Ministers are rather his servants and though he often consults them as a body, he is not compelled to do so. If any thing goes wrong it is the President who is to blame and not the cabinet as a whole. There are 8 departments which have to be provided with executive heads and these heads of departments form the cabinet. The cabinet is formed anew whenever a president enters on office.

Relation of the Executive to the Legislature :—Both the President and the ministers are independent of the Legislature. The President's power comes direct from the people and not from the Legislature. The President has a qualified *veto* upon Legislation. Bills which have to be brought before Parliament do not orginate with the Executive as they do in Britain, but with the committees of the House of Representatives or of the Senate. When a bill has been passed by the Congress, however, he may either sign it and make it law or he may return it within 10 days to the House from which it came. If both Houses of Congress again approve by a $\frac{2}{3}$rd majority, the bill becomes law without President's approval. This power of veto which the president possesses has frequently been used.

The Federal Legislature :—(*a*) *The Senate*—Ninety-two members of the senate are elected on a basis of *absolute equality* of the states, each state sending 2, who must be inhabitants of that state and must be of 30 years of age. The Senators are not mere delegates of the state *i. e.*, they are not liable to be instructed as to the way in which they shall vote as are the members of the German *Bundesrath*. The Senate sits for 6 years, one third of the members retiring every 2 years. *The Senate has the same powers of Legislation as the Lower House, with the exception that bills relating to money can only originate in the House of Representatives.* The Senate has general control over treaties made with foreign powers and over many of the appointments made by the President. It is presided over by the Vice-President.

(*b*) *The House of Representatives*—The House of Representatives is elected on the basis of population of the United States as a whole. Representation is apportioned among the states according to population. The age limit for a representative is 25 years and they are elected for 3 years.

The House is divided into a great number of standing committees which largely control the business of the House. The House of Representatives is a purely Legislative body and in regard to the course of Legislation is almost entirely free from the influence of the Executive. It does not share in the executive functions of the Senate (such as appoitments *etc.*) It has the exclusive right of initiating money bills. It has also the right of impeaching officials.

The Acts of Congress :—The two Houses together are called the Congress. A bill which has passed both the Houses of Congress and received the signature of the President, becomes law though as we have seen the President has a limited power of veto.

The Federal Judiciary :—The judicial power of the constitution is vested in the Supreme Court, Circuit Courts of appeal, Circuit Courts, district Courts, and Court of claims.

The Judges are appointed during good behaviour and once appointed are entirely independent of the legislature.

Governments of States.

The various states which go to make up the Federation are important because of their independence of one another and the large amount of power they themselves have. There are two law-making bodies in each state. The States also have separate Judicial Courts which are not simply sub-divisions of Federal Courts, but, except in relation to certain questions, have complete jurisdiction. With regard to questions entirely connected with a particular state, there is no appeal to a Federal Court. The head of the executive in each state is called a Governor. Each state also has a system of state and local taxation.

Parties in the United States—The two great parties in America are the *Republicans* and the *Democrats*. The Repub-

licans have always favoured a strong central Government and have been disposed to exalt the authority of the Central Federal Government at the expense of the Government of the separate States. The Republicans have also exhibited a love of order greater than their love of liberty *i. e.*, they think that if an individual possessing full liberty cannot conduct himself in an orderly manner his liberty should be restricted. The Democrats, on the other hand, have exalted the powers of the individual states. As regards the individuals, they have adopted what is known as the Laissez Faire system of Governmet *i. e.*, they have argued that as small powers as possible should be given to the Government and as much as possible to the individual.

§ 4. The British Constitution.

Character of the English Constitution :—(*a*) The English Constitution is an unwritten constitution ; it cannot be defined. There is no written document as in the case of the United States, America. It must be gathered from the sum-total of acts of Parliament and customs. Its special and almost unique characteristic is that it is subject to constant and continuous growth and change. Hence it is an *elastic* constitution. This elasticity or or flexibility is one of the surest safeguards against revolutionary changes, for by means of ordinary legislation every part of the constitution can be changed whenever a change is necessary. (*b*) The British constitution is the product of slow and unconscious growth. It is a living organism, absorbing new facts and transforming itself. It has not been *made* but has grown up by a continual series of adaptations to existing needs. The English people are extremely practical men. They never proceeded on a *apriori* principle *i.e.*, they obtained liberty not by the sudden

assertion of the abstract principles of liberty, but by gradual limitation of arbitrary power. (*c*) Extreme veneration for customs, and a disposition to make as little change in them as is compatible with changing times is a peculiar feature of the English people. The result is a conservative temperament. The House of Commons have acquired omnipotent powers simply by imposing *customary restraints* on the exercise of authority by the crown and the House of Lords, which the House of Commons could not have by limiting that authority by law. (*d*) The British constitution is probably the outstanding example of constitutional monarchy which has been described as a combination of all forms of state, preserving the greatest variety without sacrificing the harmony and the unity of the whole. There is the fact of kingship but the king rules not according to his arbitrary will, but according to the will of the people which is expressed through the representatives of the people. He *must* obey the requirements of the constitution. Hence the English Constitution has been described as that of a republic veiled in monarchical forms. (*e*) The chief characteristic of the English constitution is the sovereignty or absolute supremacy of Parliament. It has the right to make or annul any law whatever and no person or body has any right to set aside the legislation of Parliament. It has even the power to depose a king.

Unlike constitutional progress in other countries the *growth of the English constitution has been a slow modification and almost unconscious development.*

Development of Parliament.

In considering the stages of development we may consider first of all, the Anglo-Saxon '*Witenagemot.*' When the various small Anglo-Saxon kingdoms were combined, the powers which

each one had separately possessed, became merged in a great council called the 'Witenagemot' or the 'assembly of the wise.' Every freeman could attend and vote in this assembly if he wished to do so. But practically its membership was limited to the sheriffs of the country, the Ealdormen, the Bishops, and the members of the royal house-hold. It had the power to elect or depose a king. It controlled the lands and taxation and was the supreme Law-Court of the kingdom. As time went on, the authority of the Witenagemot decreased and that of the king increased.

William the Conqueror (1066) wished to make it appear that he had obtained the crown of England by inheritance rather than by conquest. Therefore he was desirous of maintaining as many of the Anglo-Saxon institutions as possible. With this end in view he continued the old assembly of the Saxons but greatly changed its character. The royal power was very largely increased and the feudal system by which the barons held their lands directly from the king, had a great influence upon the constitution of the 'Witenagemot.' It was now called the 'Great Council'; and its membership was largely made up of the king's tenants-in-chief, *e.g.*, Archbishops, Bishops, Earls, Barons and Knights. As a matter of fact, only the greater Barons and Churchmen attended. Woodrow Wilson says that "the development of the 'Great Council' of the Norman Kings is the central subject of early English Constitutional history. For from it may be said to have sprung the whole effective organisation of the present Government of England."

The present Parliament of England is a lineal descendant of the Great Council of the Norman Kings. The granting of the Magna Carta in 1215 had a great influence upon it. The *principle of representation* was introduced and commoners as well as nobles were given seats in the national assembly.

Archibishops, Earls and Bishops and Barons were summoned directly as before but the Sheriffs were instructed to arrange for representatives of the lower clergy, of the counties and of the towns.

This composite body soon split into two sections. The lower clergy did not continue to claim representation but withdrew and formed themselves into an ecclesiastical body called 'convocation.' It they had not done this, we might have had at the present time three houses of Parliament instead of two. The remaining members of the Parliament were divided into two sections—the lords and the commons. The Bishops and Archbishops adhered to the lords. The Knights joined the commons. Here we have the origin of the present houses of Parliament. In outward from at least Parliament was by the middle of the 14th century pretty much what it is now.

The Privy Council :—The origin of the Privy Council and the Cabinet can be traced back to an 'inner circle' of the Norman Kings. The members of the Great Council who were state officers and chief officials of the Court were formed into a Permanent Royal Council. The powers of the Permanent Council were very extensive. It concentrated in itself the powers of the Great Council and was also in a position to make its power more practically felf, the reason being that the Great Council met only three times a year whereas the members of the Privy Council were always at hand for consultation. Further, the members of the Permanent Council had a more intimate knowledge of affairs than others and so their advice would naturally carry greater weight. The powers of the Permanent Council, were indeed, as great as those of the king himself. It formed really the instrument through which he performed his administrative, judicial and legislative functions.

This Permanent Council, however, was soon split up into a certain number of sub-committees—legal members of it were

formed into special committees out of which the modern Law-Courts were developed.

At the same time within the Permanent Council a still smaller section was being formed. This was known as the Privy Council and it came into existence or at least into prominence during the reign of Henry VI in the first half of the 15th century. The Permanent Council had been found to be too large for private advice and consultation. So the King bound a certain number of councillors to himself by special oaths of fidelity and called them his Privy Councillors This small body soon superseded the Permanent Council and came to exercise the chief administrative functions in the kingdom. It also arrogated to itself certain Judicial functions.

The Cabinet :—The Cabinet is really a small committee of the Privy Council which became too large for the business it had to do. Membership in the Privy Council had often been given as a mere honorary distinction and without any consideration of the political ability of the person appointed. Hence the king on most important occasions took counsel with a small body of leading ministers, who met not in the larger chamber but in a *Cabinet* or small room by themselves.

Much of the subsequent Political history of England is concerned with the efforts of this Cabinet to obtain *legalised* power. *But up to the present time there is no legal foundation for it.* It is also concerned with the relations between it and the king on the one hand, and the Parliament on the other. Generally speaking, we may say that the Cabinet began by being an irregular body composed to a great extent of the personal friends of the king and altogether dependent on him. Gradually, the cabinet acquired greater power and was brought into closer relation with Parliament. At the present day, it is almost entirely dependent upon the majority in the House of Commons.

In the time of Charles I, it was a small irregular body, selected by the king from the Privy Council It could not perform any important act of Government without the consent of the Privy Council. During the next reign it obtains the name of cabinet and was occasionally able to act independently of the Privy Council.

In the reign of Willam III the cabinet became more similar to the modern ministry. The members of it were chosen from the party predominent in the state, but its members were not all members of Parliament, nor was the cabinet as a whole fully responsible to Parliament.

About the close of the 18th century a cabinet of the present type came into being : it consists of members of Parliament chosen from the party *which has the majority in the House of Parliament, of the same political views as that* and *pursuing a policy* for which the *members of the cabinet were jointly responsible.* Failure of this policy will bring about the resignation of *all* the members of the Cabinet. As a rule, the supremacy of one chief minister is recognised *It was not till 1906 that the office of Prime minister was legally recognised.*

The Legislature--in the United Kingdom is the Parliament which consists of the crown, the House of Lords and the House of Commons. All laws are made by the Parliament. The power of the crown in matters of legislation has been reduced to a formal assent (which assent he does not refuse) of any bill passed by the two Houses. Besides its power of making laws, the Parliament is supreme over the administration of public affairs. whether national or local. The powers of Parliament may be divided into *(a)* Taxative—all taxes are granted by the Parliament. The King can no longer raise taxes on his own account. *(b)* Legislative—Parliament has the supreme power of legislation. *(c)* Judicial—The Judicial power of Parliament is vested in the Lords alone. *(d)* Deliberative

—It is a deliberative body frequently consulted by the king on question of peace and war.

The Composition and Election of the House of Commons :—The members of the House of Cmomons are elected for a period of 7 years. Most Parliaments, however do not last so long. During the last century only one Parliament lasted more than 6 years. The average duration of a Parliament is about 4 years

Election to Parliament is by ballot so that no one may know how any elector has voted, and any male full citizen of the country is eligible for election except a clergyman of the Established Church, a Roman Catholic priest, a sheriff or other returning officer, an English or Scotch peer, minors, aliens, idiots, lunatics and certain criminals. The House of commons is a representative body *i. e.*, it is elected by the people. Before the Reform Bill of 1832 the House was representative only in theory. The Country was disproportionately represented and the new large manufacturing towns were hardly represented at all. Great improvements were effected by the Reform acts of 1832, 1867 and 1884. All males holding property of the annual value of £10 or lodgers and occupiers paying the same amount have votes. The House of commons has thus become truly representative of all classes of the population.

Once a member is elected he has special duties to his constituency apart from his political bias, but he is not a mere deligate or mouthpiece. Edmund Burke when in 1774 elected for Bristol, made a speech in which he said, "Parliament is not a *congress of ambassadors* from *different* and *hostile* interests which interests each must maintain as an agent and advocate against other agents and advocates ; but parliament is a *deliberative, assembly* of *one* nation with *one* interest that of the whole, where not local purposes, not local prejudices

ought to guide, but the general good resulting from the general reason of the whole. You choose a member indeed, but whom you have chosen is not a member of Bristol but he is a member of Parliament."

The House of Commons and Legislation :—Through the course of development the prinipal share of Parliamentary business has come to be transacted in the House of Commons. *Legally the House of Lords has equal powers with the House of Commons in the origination of ordinary legislative measures except financial bills which can originate only in the House of Commons ; but the House of Lords usually confines itself to revision i. e., if it does not consider that the will of the people has been adequately represented it refuses to give its assent to the Bill But if the nation is determined to have the Bill it gives way ; otherwise the king creates peers and then gets the consent of the majority of the Lords.*

Public Bills—Cannot be introduced except by a member of Parliament ; but any member can introduce a Bill. It is the Government which prepares and introduces all the most important proposals which ultimately find their place as laws in the Statute Book. A Bill which is not introduced by the government is known as a private member's Bill and unless it deals with a comparatively important or at least uncontroversial subject it has litt le chance of becoming a law. Except Bills of great importance introduced by ministers of the crown, a Bill is read a *first time* without opposition. A motion is then made that it be read a *second time*, and if passed, the Bill is discussed by the House in Committee for the purpose of freer debate. After passing through Committee, the amended Bill is considered by the House, and if further alterations are suggested it may be referred again to Committee. A motion is then made for the third reading, and if passed, it is sent to the other House where it goes through the same process ; if

amended there, it is returned to the originating House for its assent to the alterations, and if the amendments are not agreed to, a conference takes place between deputations from the two Houses, called managers, for the purpose of coming to terms. If they cannot agree, the Bill is dropped. If, however, they agree, or the Bill is passed without amendment, it is presented for royal assent, without which it cannot become law. The Royal assent has not, however, been refused since the days of Anne. When a Bill has received the royal assent, it becomes an *Act of Parliament.**

House of Commons and Control of the national purse—Parliament, and Parliament alone, can authorise any levy of duties. The two Houses, however have very unequal shares in this authority. The Lower House claims the *right of originating all Money Bills which must be accepted without change, or rejected by the House of Lords.* Taxes are granted annually by the House of Commons. But it is not over taxation alone that the Lower House has absolute control. The expenditure of the revenue thus raised is also controlled by the House of Commons. By *appropriating supplies to speeific purposes* and *auditing public accounts* the House of Commons establishes its supreme power over the national purse.

It must not however be supposed that the House of Lords has not any right of formal sanction over taxation and expenditure. Though Money Bills eannot be altered by the House of Lords, yet their concurrence is necessary before these Bills become valid as laws.

The House of Lords:—The House of Lords is composed of about 550 Peers, 2 Archbishops and 24 Bishops of the Church of England. The number of peers may be increased by the will of the Sovereign. There are five judicial life peers.

* Fielden's *Constitutional History of England* p. 168.

Functions of the Lords and the relation between the two Houses—The House of Lords is a Court of Record, and as such has the power of inflicting fines and imprisonment. Its functions are *(a) Legislative.* In theory, it has a co-ordinate power with the king and the House of Commons : practically however, it does not initiate important measures, but confines itself to amending, and revising Bills sent up from the commons : it is thus a most useful check on hasty legislation whilst, on a matter on which the nation has really made up its mind, the Lords are compelled to yield *e. g.* Reform Bill of 1832. It has the sole power of initiating Bills relating to the peerages but cannot initiate or amend, a Money Bill. *(b) Deliberative and Consultative.* The Peers are hereditary counsellors to the king, and as such, have the *individual right of access to the Sovereign.* When Parliament is not sitting, they are the permanent Counsellors of the crown, and may give advice. (*c*) *Judicial.* The House of Lords is the Supreme Court of Appeal from the Courts of Common Law and also from the Equity Courts. In case of impeachment the Commons act as accusers, the Lords as judges. The Lords have no *original* jurisdiction except in trying a member of their own House for treason or felony.*

Although the House of Lords has it merits, it has also its defects (*e. g.*, over-conservatism), the force of which has been recently considerably lessened by the Parliamentary Act passed in 1911, in consequence of the Lords' rejection of the Finance Bill in 1909. The terms of the Parliamentary Bill are (1) If the Lords withhold their assent to a Money Bill for more than one month after the Bill has reached them, the Bill may be presented for the king's assent and on that assent being given it will become law without the consent of the Lords. It

* Fielden's *Constitutional History of England*, pp 127-128.

or the speaker of the House of Commons to decide whether ill is a money Bill or not. (2) If a Bill other than a money l is passed by the Commons in three successive sessions ether of the same Parliament or not, it may, on a third ection by the Lords, be presented for the king's assent and that assent being given it will become law. But two years ist elapse between the first introduction of the Bill and the e at which it passes the Commons a third time. (3) Five rs instead of seven to be the maximum duration of a rliament.

These restrictions on the legislative authority of the House Commons are meant to secure, and if their spirit be res-cted will secure, to the House of Lords a true and there-e a valuable suspensive veto.

The Crown.—Since the beginning of the 18th century om after Queen Anne) no English sovereign has sought to use assent to a Bill passed in Parliament; for, by constitu-nal precedent the King in such matters is regarded as acting accordance with the will of his ministers. Matters dealing h Finance are dealt with solely by the House of Commons. ie position is set forth in an oft-quoted passage from Sir skine May. "The crown acting with the advice of its *sponsible* ministers being the Executive power, is charged with e management of all the revenues of the country and with payments for public service. The crown, therefore, in the st instance, makes known to the Commons the pecuniary cessities of the government and the Commons grant such s and supplies as are required to satisfy these demands and vide for taxes. Thus the crown demands money, the mmons grant it, and Lords assent to the grant. But the mmons do not vote money, unless it be required by the wn, nor impose or augment taxes unless the taxation be cessary for the public service as declared by the crown

through its constitutional advisers." It is a doubtful point whether the king can refuse assent to a Bill. Prof. Burgess's opinion is that the king has this power which has not lost it spirit through disuse. Time may come when the king may refuse his assent to a Bill, the result of which will be no one knows what.

The Executive—in England consists of the king and the Cabinet ministers appointed with the Sovereign's formal consent. All real authority lies with the Cabinet ; though legally the ministers are only the advisers of the king, and conduct the government in his name. The true position of the Sovereign has already been described. His place in the English consitution is that of an honoured and influential hereditary Councillor. But he is not a member of the Cabinet.

Position of the Cabinet—'The Cabinet consists of the principal ministers of State and has reached its present position of power in the government because of its responsibility to Parliament. The responsibility of the ministers to Parliament is the cause of their strength and power because it makes them the agents of Parliament.' But in Law the existence of the Cabinet is not recognised though it practically guides the whole administration in England.

Ministerial Responsibility and Disappearance of Impeachment :—When the members of the Cabinet were more directly chosen by the King, there was often a struggle between them and Parliament. When Parliament disapproved however, of the policy of the king, it was the ministers of the king who had to bear the burden of *Impeachment*. The king was protected by the theory that the king can do no wrong. There are several historical instances of Impeachment of the ministers of the king when these ministers had very little direct responsibility to Parliament and were simply carrying out the commands of their royal master. When, however, the Cabinet

became more directly responsible to Parliament, then Impeachment disappeared as unnecessary because whenever the Parliament disapproved the Cabinet, dismissal followed as a matter of course. If ministers cannot command a majority in the House of Commons, they resign, and thus the Parliament as a Government-making body makes itself felt. While the Cabinet is thus directly under the control of Parliament, it at the same time shares the power and sovereignty of Parliament. The Cabinet is the channel through which the will of Parliament is applied to current affairs

Appointment of Cabinet Ministers :—When a new Cabinet has to be appointed the king sends for the leader of the political party which has a majority in the House of Commons and asks him to form a Cabinet. If the thinks his party will approve he accepts the responsibility and presents to the king a list of men suitable for appointment. These are usually men of his own party who have shown ability in political matters. They may belong to both Houses of Parliament.

Legislative functions of the cabinet—Besides its executive functions, the Cabinet also possesses certain Legislative functions. It practically guides the Legislative activity of Parliament. The ministers propose and introduce the measures which Parliament has to consider; private members have got very little opportunity of introducing bills. Further, as Seeley points out, Parliament has very little power of objecting to Government measures. They can show their disapproval of the policy of the ministers only by turning the ministers out of office. But this would mean allowing the opposite party to take office. The result, therefore, of resistance on the part of the majority in Parliament to their own ministers would be that they would replace ministers with whom they disagreed on a few points by ministers with whom they

disagree on almost all important points. If the policy of the Cabinet is disapproved by a majority in the House of commons and if the Cabinet thinks that the opinion of the nation is not fully represented by this majority, the Cabinet may demand a dissolution of the House and ask for a fresh election. If the new House also disapprove of the policy of the Cabinet the ministers resign.

Executive functions of the cabinet :—many of the minis ters besides being members of the Cabinet are also heads departments and in this connection they exercise executive functions. These functions are exercised in close connection with Parliament. The ministers must, as we have seen, be in general agreement with the majority in Parliament but they must also explain almost daily to Parliament the principles on which they are conducting the Government. They must obtain the approval of Parliament for their actions, though they need not consult Parliment, previously to taking action. The duty of justifying the action of a Cabinet minister in Parliament is usually performed by a political under-secretary.

There are five great offices of state superintended by the ministers connected with the various departments—The Home office, the Foreign office, the India office, the Colonial office and the War office.

The Treasury department is controlled practically by the Chancellor of the Exchequer who controls the revenue and expenditure of the State. He submits annually to Parliament the Budget. If the existing taxation will not yield sufficient, he will bring forward proposals for increased taxation. If on the other hand, the existing taxation is likely to yield too much, the Chancellor will bring forward proposals for remission of taxation.

The composition of the Cabinet—The number of the Cabinet is not always the same. It varies from 15 to 20 minis-

ters. There are however, always 11 officials including First Lord of the Treasury, Lord President of the Council, the Lord Privy Seal, the Chancellor of the Exchequer, First Lord of the Admiralty, 5 Secretaries (Home, Indian, Colonial, Foreign and for War). Usually there are added to these, the President of the Board of trade, the Secretary for Ireland, and the President of the Local Government Board.

No member of the House of Commons may accept office without the approval of his constituents. If he is appointed to an office, he must be re-elected by his constituents. The Prime Minister usually takes the office of the First Lord of the Treasury.

The Privileges of Parliament—A. Common to both Houses :—(1)Freedom from arrest and molestation during the sitting of Parliament and for 40 days preceding and succeeding the Session, except in cases of treason, felony etc. (2) Freedom of speech and debate. (3) Secrecy of debate. (4) Freedom of access to the sovereign—the peers enjoy an *individual* right of access at any moment ; the Commons have only a *collective* right through the speaker. (5) The Sovereign is bound to put *the most favourable construction* on everything done in Parliament. (6) Right of deciding contested Elections. (7) Right of settling the order of business in their respective Houses.

B. Special privileges of the Lords (1) Voting by Proxy. (2) Right of dissentients to record a protest against any Act in the journals of the House. (3) Right of originating Peerage Bills. (4) Every member is entitled to receive his writ of summons. (5) All peers except spiritual peers have the right of being tried by their peers in cases of treason and felony.

C. Privileges peculiar to the commons :—*Powers over money* :—(1) The right of originating all money Bills. (2) Appropriation of Supplies. (3) Audit of Public Accounts.

The Judiciary—"The rule or supremacy of law", says

Lord Courtney, "is one of the main characteristics of the English Constitution. In France or Germany a state official cannot be made answerable in an ordinary court for acts done in his official capacity. Any complaint against him must be brought before special courts and dealt with by what is called 'administrative law.' In England, on the other hand, any official from the Prime Minister down to the policeman may have the legality of his conduct questioned in the ordinary courts." This equality of the official as well as the ordinary citizen before the law, provides one of the surest and strongest securities for individual liberty. This had been the case because of the independence of the Judges. Judges retain office during good behaviour and can be removed on a joint address from both Houses of Parliament.

CHAPTER XIII.

Party Government.

A PARTY,' as described by Prof. Raleigh, 'is a body of citizens who agree in desiring to see the business of legislation and Government carried on in a particular way. Burke, in his Present Discontents, describes a Party as 'a body of men united for promoting by their joint endeavours the national interests, upon some particular principle in which they are all agreed'. 'A Party is held together partly by agreement in opinion, partly by interest and personal association ; it has a kind of corporate existence. It has no legal power over its members but it exercises an effective control over their words and actions'.

It is not possible for the members of a large community to be unanimous upon all questions of public interest. There must be the permanent existence of political parties in larger democratic countries where the number of voters is necessarily large ; for this electoral body can never be expected to unite in opinion upon great public questions like free trade principle, slavery question etc. Hence the electors will be inclined to choose as their representatives those who hold the same political opinions as they themselves hold.

Some political philosophers argue that there must be four classes of men : -(1) those who like to see the former state of things re-established. (2) those who like the present or existing state of things. (3) those who like reforms in the present institutions (4) those who like to replace the present institutions by new innovations. They are reactionaries, conservatives, liberals and radicals.

Party Government has neither developed in America nor in continental Europe. The European countries have adopted the English Parliamentary system, the ministerial responsibility etc., but the form of Government well-fitted to the great English parties has proved very imperfectly suited to the numerous political groups that exist in most of the continental legislatures.

It is in England that Party Government plays the most vital part. The present Parliamentary system is an expression of the division of the House of Commons into two parties. But neither the Parliamentary system, nor the party system, neither the responsibility of ministers to the House of Commons nor the permanent division into two parties grew up in a day. Little by little, with halting steps, the rivalry of parties -- whigs and tories, liberals and conservatives—built up the responsibility of ministers, and this in turn helped to perpetuate the party divisions.

A party is said to be in power when it places its leading members at the head of the Government. The Cabinet is drawn from the party which has a majority in Parliament. A party not in power is known as the Opposition which devotes itself to more or less hostile criticism of the acts of the Government. When the Opposition obtains a majority upon an important action of the Government, the ministry resigns and the Opposition undertakes the formation of a new Government. The English Government is a Government by Party.

The conditions of a good party Government are that the Opposition should not be regarded by the Government as revolutionary ; the Opposition itself should not be revolutionary in character *i. e.*, the leaders of Opposition should restrain their followers from obstructon, and direct their attention to those acts of the Government which are really open to objection, or as Prof. Dicey puts it—parties must be divided upon real

differences ; and lastly, the Parties should be divided not on social grounds but on questions of public matters.

The uses of Party Government :—(1) 'Parties save society from disintergation by supplying us with forms of partial union ; they bring social questions into a manageable compass by grouping similar opinions and allied interests round a limited number of central points' (2) the Government takes steps very cautiously for fear of being bitterly criticised by the Opposition. (3) It is only by Party Government that true Democratic Government becomes practicable. Democratic Government or the rule of the people means essentially the rule of a majority as it is impossible for all the people to rule singly. A number of men can remain together as a majority, only by being 'unanimous' upon public questions. Party Government becomes a success only where there are only two parties.

The Evils of Party Government :—(1) 'Party Government' says, Prof. Raleigh, 'draws to itself the allegiance due to the State.' (2) Party Government set up a kind of 'artificial agreement' among the members of a party. It is possible for member of a party not to be unanimous with the opinion of that party but for the sake of his own party he has to suppress his 'freedom of individual opinion' and to concur with his party. (3) The disagreement between two parties is also artificial ; each party remains in a state of *wilful inconvincibility* as if the business of the Opposition is to criticise the action, good or bad, of the party in power. (4) Party Government tends to 'banish courtesy from political life *i. e.*, each party praises itself and denounces the other party as factious etc.

Party Government contains both good and evil and the remedy for the evils of Party Government is the cultivation of impartial spirit. No party should consider that its opinions are correct, while those of the opposite party are incorrect.

UNIVERSITY QUESTIONS.

1911. (Pass and Honours.)

1. Account for the preservation in and subsequent diffusion throughout Europe of the principles of Roman Law. (See p. 36.)

2. Give a short account of the composition and functions of the German Reichstag. (See pp. 158-59.)

3. What modern departments have been developed from the Great Council of early Normans? Describe briefly the method of their development. (See p. 168).

4. Give a short account of the German Chancellor and contrast his position with that of the English Prime Minister. (See pp 159-60).

5. Mention the chief functions of the English Parliament. (See p 172).

6 What various dates have been assigned for the commencement of the modern Epoch? What are Bluntschli's ideas on the subject? (See pp. 18-19).

7. What is the Utilitarian Doctrine and what are its defects? (See p. 19).

8. Distinguish between the the terms 'People' and 'Nation.' (See p. 51).

9. What are the ordinary characteristion of theocratic states? (See p. 97).

10. Criticize Aristotle's Classification of States in the light of Modern History, and consider the question of Mixed State. (See pp. 91 92, 118).

11. Define the State and mention and classify the functions of the state that follow from your definition. (See pp. 12, 144-148).

12. Give a short survey of the evolution of the state in history. Discuss the ideas of the Universal State. (See pp. 29 30, 12-14).

13. Explain the conception of the Law of Nature. Compare and contrast this Natural Law with Jus Gentium. (See pp. 70-72).

14. Analyse the of conception of constitut onal monarchy and notice its chief forms. (See p. 104).

15. Analyse the idea of Government as distinguished from the State. (See pp. 38,85-86).

16. Explain carefully the constitution of the German Empire as a confederation of states, with special reference to the functions of the Emperor, the Bundesrath and the Reichstag. (See pp 156-160).

1912. (Pass and Honours.)

17. What are your ideas on the subject of state interference? (See pp. 144-148).

18. What are the arguments for and against the grant of the franchise to women? (See pp. 113-115).

19. Criticise Aristotle's classification of states. (See pp. 91-92).

20. What are the divisions of Political Science and what branches of study does each embrace? (See p. 2).

21. Write a short note on the privileges of the Commons. (See p. 181).

22. What are the principal difficulties in the way of the formation of a federation of the British Empire. (See p. 123-125).

23. Contrast the Greek and Roman ideas of the state. (See pp, 15-16).

24. Enumerate the Principal steps in the growth of the supremacy of the House of Commons. (See p. 168-175).

25. What theoretical objections have been urged against a Universal State, and how does Bluntschli answer these? (See pp. 13-14).

1913 (Pass and Honours.)

26. What is meant by *party*? Discuss the merits of the two party system. (See pp. 183, 185).

27. Say what you know of the theory of the separation of powers, (See p. 131).

28, Specify some of the more important functions of government. On what grounds are we justified in regarding *Education* as one of the proper offices of the state? (See pp. 146-148).

29. Discuss some of the more important theories concerning the origin of the state. (See pp. 23-80).

30. What are the essential attributes of states, and what is exactly meant by saying that the state is an organism? Give examples of the various types of composite states. (See pp. 9-12, 118-120).

31. Write a brief commentary, historical and critical, on the Contract theory of the origin of the state, (See pp. 25-28).

32, Say what you know of the origin, the development, and the present position of the Cabinet in the English constitution. (See pp. 171-172, 178).

33. What do you conceive to be the essential principle of Aristocracy, and what are its general characteristics? (Seep 105-106).

34. Illustrate some of the more striking differences between ancient and modern Democracy. (See p. 108-109, 96).

Write an Essay on any *one* of the following subjects:—

(*a*) Written and Unwritten Constitutions.

(*b*) The Social Contract Theory.

(*c*) The Nature of Sovereignty.

1914. (Pass and Honours.)